



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/154727

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a hearing was held on February 05, 2014.

The issue for determination is whether respondent correctly terminated petitioner's Medical Assistance (MA) benefits December 1, 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Beulah Garcia

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Peter McCombs

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner received BadgerCare Plus (BC+) for himself and his family. Although petitioner had access to insurance through his employer, an agency error resulted in petitioner's ongoing enrollment in BC+.
3. Petitioner's spouse reported new employment in October, 2013. A verification request was sent requesting that petitioner provide verification by November 4, 2013. On November 11, 2013, notice was sent indicating that BC+ would close as of December 1, 2013 due to failure to verify income.
4. Requested verification regarding petitioner's spouse's income was received on December 6, 2013, and notice was issued December 9, 2013, indicating that BC+ would open for all family members as of January 1, 2014, and that the children only were open for December, 2013, as the adults had other insurance available.
5. Petitioner's employer provided verification information to the respondent on December 16, 2013; on December 18, 2013, notice was sent to petitioner indicating that BC+ for the family would close as of January 1, 2014, due to income over the limit for the adults, and other available insurance for the children.

DISCUSSION

To be eligible for BC+, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. Eligibility for BC+ can be affected by employer-sponsored insurance availability. Admin. Code, §DHS 103.03(1)(f) 2-5. Effective July 1, 2012, the Department implemented new provisions concerning BC+ eligibility for families with access to insurance, with the new policy becoming effective at each current household's next review. BC+ Handbook, § 7.31.

Under the new policy, if an employer provides health insurance, members of the household are ineligible for BC+ under certain circumstances. Handbook, § 7.3.3. If the employer pays 80% of the monthly premium, an adult can be eligible if the percentage of the premium paid by the parent for *employee-only* insurance is more than 9.5% of monthly income. Handbook, § 7.3.3.

In this case petitioner received BC+ benefits in the past because an agency error resulted in the failure to budget petitioner's commission income and access to insurance. Petitioner does not contest the ineligibility, and the respondent does not seek to recover any overpayment due to the fact that the error was an agency error. In any event, petitioner argues that he understood that he had BC+ coverage through the end of December; relying on that assumption, he received medical attention in December, 2013. BC+ will not cover that service, which he believes to be unfair; petitioner testified that his wife contacted the respondent after receiving the November 11, 2013, notice, and she was informed that everything would be fine once the verifications were received. As noted in the Findings of Fact, above, the respondent wasn't aware of the petitioner's ongoing ineligibility until it received petitioner's employer verification information in the middle of December.

While I can certainly understand the petitioner's confusion in light of the multiple notices, the fact remains that petitioner received two notices, November 11, 2013, and December 9, 2013, that informed him that he was not enrolled in BC+ for the month of December. I acknowledge that petitioner received medical attention on December 3, 2013, almost a week prior to the December 9, 2013, notice. This would arguably fall into the period after his wife spoke with the respondent, and before the second notice indicating that only the children would be covered by BC+ in December, 2013. However, petitioner's

medical visit on December 3, 2013, also occurred prior to the respondent's receipt of petitioner's wife's employer verification, which was already almost a full month past the required due date of November 4, 2013. While the respondent bears some culpability here, the petitioner also bears responsibility for his assumptions in this regard.

Ultimately, logic precludes a remand of this matter. The petitioner was not eligible for benefits in December, 2013. He was not eligible for benefits in previous months either, due to agency error in determining eligibility. I am unable to discern any basis for a finding that the respondent incorrectly terminated petitioner's BC+ enrollment effective December 1, 2013. Regardless of whether respondent's notices were confusing to the petitioner, the ultimate facts remain that (1) notice of termination was provided; and (2) he simply was not eligible for benefits in December, 2013.

CONCLUSIONS OF LAW

The agency correctly sought to discontinue petitioner's BC+ effective December 1, 2013.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 10th day of April, 2014

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 10, 2014.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability