



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/154733

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 08, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services (MES) in regard to Medical Assistance, a telephonic hearing was held on February 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is Milwaukee Enrollment Services (MES) correctly discontinued the petitioner's BadgerCare (BC) Plus benefits effective November 1, 2013, due to access to and enrollment in private health insurance (HMO) for which her employer paid at least 80% of the premium.

There appeared at that time and place 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: Jose Silvestre, Jr., IM advanced  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner received BadgerCare Plus benefits for a household of two (petitioner and her daughter).

3. As of about August 26, 2013, petitioner began employment as a State of Wisconsin employee as an income maintenance worker. Her September, 2013 earned income was \$1,272.80 every other week. See Exhibit 2.
4. Milwaukee Enrollment Services (MES) learned that petitioner as a state employee had access to and enrolled in private health insurance through United Health Care HMO as of November 1, 2013. The State of Wisconsin (as employer) paid at least 80% of petitioner's private health insurance premium. See Exhibit 1.
5. MES sent a September 25, 2013 Notice of Decision to the petitioner stating that her BC Plus benefits would discontinue effective November 1, 2013, due to her enrollment in the United Health Care HMO as of November 1, 2013 and that the State of Wisconsin paid at least 80% of that premium. See Exhibit 2.

### DISCUSSION

BadgerCare Plus is an expansion of the Wisconsin Medical Assistance program meant to provide insurance for children under 19 and their parents. *BadgerCare Plus Eligibility Handbook (BCPEH)*, 1.1. There are two major BCP benefit plans. To be financially eligible for the BCP Standard Plan (full MA benefits), a family cannot have income greater than 200% of the federal poverty line (FPL). Wis. Stats. §49.471(8). The BCP Benchmark Plan (limited services) is available to children in households with income above 200% of the poverty line, and to self-employed parents/caretakers.

Additionally, there is a hybrid nonfinancial/financial BCP eligibility test related to access to other insurance. If a household's income exceeds 133% FPL, the household cannot be eligible for BCP if it has access to employer-based health insurance. *Id.*, §7.1. In 2013, 133% of the poverty line for 2 persons was \$1,719. See *BCPEH* at §50.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>

However, central to this case is that Wis. Stat. §49.471(8) states that a family is ineligible if it has, or **has access to, employer-subsidized health care coverage**. The Wisconsin Administrative Code §DHS 103.03(1)(f)2, and the *BCPEH*, 7.3, state that a family with income exceeding 133% of the FPL is ineligible if it is covered by and has "access" to any health insurance plan that meets the standard of the Health Insurance Portability and Accountability Act (HIPAA). A HIPAA plan is any group plan that provides medical care to individuals and/or their dependents. Wis. Stat. §49.471(1)(g).

#### ACCESS-80% PREMIUM

So, what is "access?" Access is currently measured in two ways, either of which is disqualifying. First, the statute declares that a family has "access" to other health insurance if the employer is paying at least 80 percent of the premium:

**(8) HEALTH INSURANCE COVERAGE AND ELIGIBILITY.** ...

(b) Except as provided in pars. (c) and (d), an individual ... **is not eligible for BadgerCare Plus if any of the following applies:**

1. The individual has individual or family health insurance coverage that is any of the following:

**a. Coverage provided by an employer and for which the employer pays at least 80 percent of the premium.**

2. The individual, in the 12 months before applying, had access to the health insurance coverage specified in subd. 1. ...

*(Emphasis added).*

Wis. Stat. §49.471(8). The parallel state code provision and policy handbook section echo the statute on this issue. Wis. Admin. Code §DHS 103.03(1)(f)3; *BCPEH*, §7.3.

In the instant case, the petitioner at first disputed the correctness of the November 1, 2013 discontinuance of her BadgerCare Plus benefits. However, after hearing MES's case, the petitioner at that point no longer disputed that she has been enrolled in the United Health Care HMO as of November 1, 2013 and that the State of Wisconsin paid at least 80% of her premium. See Exhibit 2. As a result, petitioner was clearly no longer eligible for BadgerCare Plus as of November 1, 2013 pursuant to Wis. Stat. §49.471(8). Accordingly, based upon the above, I conclude that Milwaukee Enrollment Services (MES) correctly discontinued the petitioner's BadgerCare (BC) Plus benefits effective November 1, 2013, due to access to and enrollment in private health insurance (HMO) for which her employer paid at least 80% of the premium.

### CONCLUSIONS OF LAW

Milwaukee Enrollment Services (MES) correctly discontinued the petitioner's BadgerCare (BC) Plus benefits effective November 1, 2013, due to access to and enrollment in private health insurance (HMO) for which her employer paid at least 80% of the premium.

**THEREFORE, it is**

**ORDERED**

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 20th day of March, 2014

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals

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**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 20, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability