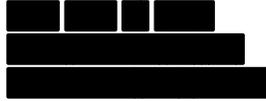




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/154867

PRELIMINARY RECITALS

Pursuant to a petition filed January 18, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance/BadgerCare Plus (BCP), a hearing was held on February 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's children's BadgerCare Plus due to availability of other health insurance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Yia Xiong ,IM Spec. 2
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. BadgerCare Plus (BCP) is a Wisconsin variant of MA for low-income pregnant women or families with minor children. The petitioner's children were covered by BadgerCare Plus (BCP)

until December 31, 2013. Notices of the discontinuance was issued on December 18 and December 27, 2013. The basis for discontinuance was failure to supply verification requested as part of the annual review/renewal process.

3. The petitioner's BCP case was due for a review in December 2013. The petitioner filed her review document on December 4. A verification request letter was then sent to her on December 5, 2013, requesting paystubs or an employer verification form from [REDACTED] by December 16. That verification was received by the Department on December 27, 2013. Having confirmed the petitioner's employment, the Department then requested health insurance availability information from the employer. The employer's response, received January 16, 2014, states that insurance coverage for the petitioner's children was available.
4. For covered employees and their minor children, [REDACTED] [REDACTED] pays 82% of the health insurance premium for the employee and family members. *See*, Exhibit 4. This employer allows employees to enroll their families at the time of hire. They may also enroll the children at any later time, but pay a late fee. The amount of the late fee was not made clear in the hearing record.
5. The petitioner did not ask the employer to enroll her children in the employer plan, prior to BCP discontinuance. She began this employment in 2012.
6. The Department issued written notice that confirmed the discontinuance on January 27, 2014. The basis for discontinuance was that the household had access to other (employer-based) health insurance. No notices issued from December 18, 2013, onward advised the petitioner that her children would be eligible for BCP after December 31, 2013.
7. The petitioner's gross household income for this group of four totaled \$3,344 in December 2013. This placed the household at 170% of the Federal Poverty Level (FPL).
8. The petitioner incurred medical expenses for one of her children in January 2014.

### 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. The petitioner's household income does not exceed 200% FPL.

Additionally, there is a hybrid nonfinancial/financial BCP eligibility test related to access to other insurance. If a household's income exceeds 150% FPL, the household cannot be eligible for BCP if it has access to employer-based health insurance. The poverty line amounts are viewable at *BCPEH* at §50.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> .

Wis. Stat. §49.471(8) states that a family is ineligible if it has, or had *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 150% 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).

So, what is "access?" 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 whose family income exceeds 150 percent of the poverty line 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. ...**

(d)1. None of the following is ineligible for BadgerCare Plus by reason of having health insurance coverage or access to health insurance coverage:

a. A pregnant woman.

b. [a child under age one] ...

2. An individual under par. (b)2., or an individual who is an unborn child or an unborn child's mother under par. (c)2., is not ineligible if any of the following good cause reasons is the reason that the individual did not obtain the health insurance coverage under par. (b)1. to which they had access:

a. The individual's employment ended.

b. The individual's employer discontinued health insurance coverage for all employees.

c. [A family member was] eligible for other health insurance coverage ... at the time the employee failed to enroll in the health insurance coverage under par. (b)1. and no member of the family was eligible for coverage under this section at that time.

d. The individual's access to health insurance coverage has ended due to the death or change in marital status of the subscriber.

e. Any other reason that the department determines is a good cause reason.

*(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. When a person has "current access" to enroll for insurance in the month of review, the Department has created no good cause exceptions for not enrolling in the private plan:

There are no good cause reasons for not enrolling in a health insurance plan when an individual has current access.

*BCPEH*, § 7.3.2.

None of the facts in the Findings above are in dispute. Rather, the petitioner argues that she did not seek enrollment with the employer during the December through January because she was waiting to hear the results of her December 2013 BCP renewal application. She argues that she did not receive a final answer with the ultimate reason for case closure until January 27, 2014. Unfortunately, by that point in time, she had incurred unexpected medical bills for a child. However, the petitioner was on notice that her BCP certification was not in place, due to the two December notices.

Applying the statute and policy to the facts of this case, I must conclude that the agency acted correctly in denying the petitioner's children's BCP certification in 2014.

As an aside, it was not clear to this judge from the record as to whether the \$226.92 employee share of the monthly family premium declared by the employer on Exhibit 5 (EVFH form) was before or after the

addition of the late fee. The late fee is imposed for 18 months. If the late fee drives the employee premium share above \$226.92 and above 20%, the petitioner may wish to file a Rehearing Request, as described below. The Rehearing Request should include a document from the employer that states the amount of the monthly late enrollment penalty.

**CONCLUSIONS OF LAW**

1. The Department correctly denied BCP for the petitioner’s children due to their current ability to access other health insurance coverage.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 17th day of February, 2014

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



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

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 17, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability