



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/154988

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on March 10, 2014, at Manitowoc, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's BadgerCare Plus benefits effective February 1, 2014, due to access to and enrollment in private health insurance for which petitioner's husband's employer paid at least 80% of the premium.

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: Diane Streekstra, ESS
Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Manitowoc County.
2. During her May 23, 2013 review, the petitioner re-applied for BadgerCare Plus benefits for her household of four (petitioner, her husband, and their two children) and was approved. See Exhibit 1. The petitioner's two children are ages 10 and 14 years of age.

3. On or about September 18, 2013, the county agency received an “alert” that petitioner had access to employer health insurance through her husband’s employment.
4. Petitioner’s husband has been employed for the company, [REDACTED], since about 2011.
5. The county agency confirmed that petitioner through her husband’s employment had access to and enrolled in private health insurance. Her husband’s employer paid at least 80% of petitioner’s family’s private health insurance premium. See Exhibit 1.
6. Petitioner’s employer offered a health insurance plan with a \$40 premium per month. That premium is less than 9.5% of the family’s household income.
7. The petitioner’s countable household income is 191.49% of the Federal Poverty Level (FPL).
8. The county agency sent a December 23, 2013 Notice of Decision to the petitioner stating that her BadgerCare (BC) Plus benefits would discontinue effective February 1, 2014, due to her access to and enrollment in her husband’s employer’s private health insurance which paid at least 80% of that premium.
9. The petitioner wanted to continue her BadgerCare (BC) Plus coverage because the private health insurance had high co-pays and deductibles which were difficult to afford.

DISCUSSION

To be eligible for BadgerCare Plus (BCP), 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. Effective July 1, 2012 – December 31, 2013, the Department implemented new provisions concerning BCP eligibility for families with access to employer sponsored insurance. See BCP Handbook, §7.1 available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. Under the policy, if an employer provides health insurance, members of the household are ineligible for BCP under certain circumstances. BCP Handbook, §7.1.1. The policy provides:

To prevent the crowd out of private insurance, BadgerCare Plus (BC+) benefits may be denied or terminated for individuals who have access to certain employer sponsored health insurance policies when those individuals:

1. Are adult parents and caretaker relatives with household income above 133% of the FPL.
2. Are infants under age 1 with household incomes over 300% of the FPL, children ages 1 through 5 with household incomes over 185% of the FPL and children ages 6 through 18 with household incomes over 150% of the FPL,
3. Are pregnant women eligible under the BC+ Prenatal Program at any income level,
4. Are not in an exempt category (see list below) and,
5. Do not have a good cause reason for failure to enroll in an employer sponsored health insurance plan.

Individuals exempt from the policies related to health insurance access and coverage are:

1. Continuously Eligible Newborns,
2. Children under age 19 who have met a deductible (exempt only during the deductible period),
3. Infants less than 1 year old with household income at or below 300% of the FPL,
4. Children ages 1 through 5 (up to age 6) with household income at or below 185% of the FPL,
5. Children ages 6 to 18 with household income at or below 150% of the FPL,
6. Former Foster Care Youth (FFCY),

7. Pregnant women, other than those in the BC+ Prenatal Program,
8. Parents and caretakers who are blind or disabled (including MAPP Disabled), as determined by the DDB, or through the Presumptive Disability process ([MEH 5.9](#)), and
9. Parents, caretaker relatives, and children who are in an Extension.

See [BCP Handbook](#), §7.1.1.

7.3.2 The 80% Current Access Test

Children and BC+ Prenatal Program members with access to health insurance, including access due to a *qualifying event*, through an employed family member who is currently living in the household are **not eligible for BC+ benefits if:**

1. The access is to a *HIPAA* health insurance plan through a current employer for which the **employer pays at least 80% of the premium** or the State of Wisconsin's health care plan (regardless of plan type, or premium amount contributed by state or local government); **and**
2. The *applicant*/member is a child under age 19 and the child is not exempt; **and**
3. The coverage would begin within three calendar months following:
 - a.
 - a. The BC+ application *filing date*; **or**
 - b. Annual review month; **or**
 - c. Employment start date

The child or BC+ Prenatal Program member who could have been covered by the health insurance plan are ineligible for BC+ benefits. Children under 19 years of age can become eligible by meeting a *deductible*. (See [Ch. 17](#))

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

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 did not dispute correctness of the February 1, 2014 discontinuance of her BadgerCare Plus benefits for the above reasons. However, petitioner wanted to explain that she wanted to continue her BC coverage because of her household's financial difficulty in affording the co-pays and deductibles of her husband's employer's private health insurance. She did not dispute the facts presented by the county agency during the hearing. However, as indicated above, affordability and co-pays and deductibles are not a basis for continued BC eligibility or not an exemption from enrolling in a private health insurance coverage per BCPEH, §7.2.2. Moreover, ALJs do not have the authority to change law or policy based on fairness arguments. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. As a result, petitioner was clearly no longer eligible for BadgerCare Plus as of February 1, 2014 pursuant to Wis. Stat. §49.471(8). Accordingly, based upon the above, I conclude that the county agency correctly discontinued the petitioner's BadgerCare Plus benefits effective February 1, 2014, due to access to and enrollment in private health insurance for which petitioner's husband's employer paid at least 80% of the premium.

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner's BadgerCare Plus benefits effective February 1, 2014, due to access to and enrollment in private health insurance for which petitioner's husband's 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 14th day of April, 2014

\sGary M. Wolkstein
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 14, 2014.

Manitowoc County Department of Human Services
Division of Health Care Access and Accountability