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

In the Matter of

██████ ██████
██████████████████
██

DECISION

BCB/155795

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Door County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on April 28, 2014, at Sturgeon Bay, Wisconsin.

The issue for determination is whether the petitioner is entitled to a refund of her BadgerCare premiums paid for January and February, 2014, due to having purchased and paid monthly premiums for private insurance through the Marketplace for January and February, 2014.

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: Janet Cournard, ESS
Door County Department of Social Services
Door County Government Center
421 Nebraska Street
Sturgeon Bay, WI 54235-0670

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Door County who received BadgerCare (BC) Plus Benchmark benefits for her daughter.
2. The county agency sent a May 29, 2013 notice to the petitioner stating that petitioner must pay a monthly BC premium of \$97.53 for her daughter.
3. Petitioner set up an automatic payment from her bank checking account for payment of her monthly BadgerCare (BC) premium of \$97.53.
4. The county agency sent an informational letter to the petitioner indicating that her BadgerCare Plus benefits might end effective January 1, 2014. However, the county agency did not send any actual notice to petitioner that her BC benefits would end effective January 1, 2014.
5. Based upon that informational letter, petitioner purchased a private health insurance policy for her daughter through WPS Insurance to begin as of January 1, 2014.
6. On or about December 25, 2013, petitioner enrolled in the Marketplace for the Affordable Care Act (ACA) effective January 1, 2014, and paid monthly premiums for private insurance in addition to her BC premium payments of \$97.53 for January and February, 2014 (total of \$195.06).
7. The petitioner did not contact the county agency during December, 2013 or January, 2014 to cancel her BC benefits.
8. During February, 2014, petitioner contacted her bank to stop payment on the automatic BC premium payment. The BC payment was stopped by her bank as of March, 2014.
9. The petitioner county agency sent a February 17, 2014 notice to the petitioner that her BadgerCare Plus coverage was extended from January 1, 2014 through March, 2014.
10. The petitioner requested this hearing because she wants the county agency to refund her BC premium payments for January and February, 2014, because she only purchased private insurance and paid premiums for that private insurance for January and February, 2014 because she believed that her daughter's BC benefits would end as of January 1, 2014.

DISCUSSION

During the April 28, 2014 hearing, the petitioner alleged that she received a county agency notice on or about December 17, 2013 that her BadgerCare benefits would discontinue effective January 1, 2014 for her daughter. The county agency representative, ESS Janet Cournard, responded that no notice was sent to petitioner stating that her BC would end effective January 1, 2014. Instead, Ms. Cournard explained that during the fall of 2013, an informational letter was sent to all BC recipients that based upon current policy some BC recipients would no longer be able to continue their BC coverage after January 1, 2014.

Prior to January 1, 2014, the Wisconsin legislature amended its policy to continue BC coverage through March, 2014. See Finding of Fact #9 above. However, petitioner explained that she believed that that her daughter had no BC benefits after January 1, 2014. She further explained that she believed she had no option except to pay monthly premiums for private insurance premiums through the Affordable Care Act as of January 1, 2014 due to lack of clear information or notice to her. Petitioner alleged that she was not aware until during February, 2014 that her BC premiums had been paid from her checking account for January and February, 2014 BC premiums in the total amount of \$195.06. She explained that once she became aware of those payments, she contacted her bank to stop the automatic BC premium payments.

Petitioner requests that her BC premium paid for January and February, 2014 be refunded because it was not fair to charge petitioner any BC premium for January or February, 2014, when she only purchased private insurance because she believed her BC would end as of January 1, 2014. However, the county agency responded that while there was an informational letter to petitioner, the county agency did not send a specific notice to petitioner that her daughter's BC would end as of January 1, 2014, and thus it was the choice of petitioner to purchase the private insurance as of January 1, 2014.

The petitioner wants the county agency to refund her BC premium payments for January and February, 2014, because she only purchased private insurance and paid premiums for that private insurance for January and February, 2014 because she believed that her daughter's BC benefits would end as of January 1, 2014. The petitioner's argument is understandable and there was some confusion regarding BC continued coverage during that period. The petitioner is basically requesting an equitable remedy because she finds the "double" premium (BC premium and private insurance premium) to be unfair. However, as an Administrative Law Judge (ALJ) I cannot make an exception based upon equitable considerations of "fairness" such as those suggested by petitioner. In order to do so I would have to exercise equitable powers. ALJ do not possess any equitable powers and must apply the law and policy as it is written.

CONCLUSIONS OF LAW

The petitioner is not entitled to a refund of her BadgerCare premiums paid for January and February, 2014, due to having purchased and paid monthly premiums for private insurance through the Marketplace for January and February, 2014 because ALJs do not have equitable powers.

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 27th day of May, 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 May 27, 2014.

Door County Department of Social Services
Division of Health Care Access and Accountability