



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/156220

PRELIMINARY RECITALS

Pursuant to a petition filed March 21, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on April 3, 2014, by telephone.

The issue for determination is whether the Department has discontinued the petitioner's BCP effective April 1, 2014.

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: Ms. Pang Thao-Xiong, IM Spec. Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a non-elderly adult resident of Milwaukee County.
2. Prior to January 2014, the petitioner received BCP for herself and her two children. She receives child support and earned income. As part of a review process, she submitted her recent paystubs in early December 2013. The Department then recalculated her income as being at 153% of the

federal poverty level, and determined that she would have to pay a BCP premium to continue her adult coverage effective January 1. On December 3, 2013, the Department issued written notice to the petitioner advising that her BCP would continue, subject to payment of a \$101.00 monthly premium, effective January 1, 2014. The children remained eligible for BCP without a premium.

3. The petitioner has paid her BCP premiums through March 2014. If she continues to pay those premiums, she is expected to be able to continue to receive BCP as an “extension case” through at least April 2014.
4. In March 2014, the petitioner’s case was reviewed again, to determine if BCP eligibility should be continued past the April 1 effective date of some major BCP law changes. On March 26, the Department issued a written verification request to the petitioner for her 18-year old son’s employment information and income. Because that verification is not due back until April 4, the petitioner’s BCP case is in “pending” status with the Department at this time.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program’s nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. Wis. Stat. § 49.45(23); 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 2.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in April 2014). The petitioner meets the nonfinancial eligibility tests for the program.

The petitioner must also pass an income test. Effective April 1, 2014, an eligible adult applicant cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount is \$972.50 monthly for a household of one, \$1,310.83 for a household of two persons, and \$1,649.17 for a household of three in 2014. *Id.*, § 50.1.

Assuming that the petitioner continues to pay her BCP premiums (the April premium is due by April 10) and timely returns the requested verification on her son, the petitioner should continue to receive BCP through at least April 2014 as an “extension case.”

18.1.1 BC+ Extensions Introduction

A BC+ extension is a period of eligibility given to a person when the countable household income increases above 100% FPL for the BC+ group size either due to an increase in earned income, child support income, and/or spousal support; and otherwise meets the BC+ eligibility criteria for persons with incomes below 100% FPL. *Non-MAGI* BC+ individuals can enter an extension when the assistance group’s earned income, child support, or both increases above 100% FPL. A parent/caretaker relative or pregnant woman whose eligibility is determined using *MAGI* rules can enter an extension due to an increase above 100% FPL in the assistance group’s earned income, spousal support, or both.

If a family is also moving out of the State of Wisconsin at the time of the income increase, or if a case closes for lack of review or verification and then later reapplies, they would not be eligible for the extension. ... Starting April 1, 2014, the restrictive reenrollment period for those adults who fail to pay a premium will be 3 months.

BCPEH, § 18.1.1. The Department worker opined that the petitioner’s extension may last until June 30, 2014, and that the petitioner will receive a discontinuance notice before that happens. I was unable to locate any authority saying that the BCP extension can last for six months but did see authority for

extensions of either four or 12 months. *See, BCPEH*, §§ 18.2 – 18.3; *BEPS/DFS Operations Memo*, No. 13-32 (10/14/2013), p.30; Wis. Stat. § 49.46(1)(c). The BCP statute, Wis. Stat. § 49.471, was not helpful in this authority review. Because the Department has not acted to end the petitioner’s BCP by the date of this hearing, however, the issue of the extension length is not ripe for me to adjudicate. Whenever the petitioner does receive a BCP discontinuance notice, she is free to file a new appeal to challenge her extension length, if she wishes to do so.

When the petitioner eventually receives a notice from the Department advising that her BCP extension has ended, she will be able to go to the federal Marketplace website to buy subsidized private insurance. That website is www.healthcare.gov. Even though the “open enrollment” period ended March 31, 2014, the discontinuance of the petitioner’s BCP will trigger a “special enrollment period” for the petitioner for the Marketplace. A special enrollment period runs for 60 days from the end of the petitioner’s BCP coverage. 45 C.F.R. § 155.420.

CONCLUSIONS OF LAW

1. The Department has placed the petitioner’s household in a BCP extension, due to the petitioner’s increased earnings.
2. The Department has not yet discontinued the petitioner’s BCP coverage, due to a “pending” verification request.

THEREFORE, it is

ORDERED

That the petition is 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 4th day of April, 2014

\sNancy ■ Gagnon
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 4, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability