



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCC/156543

PRELIMINARY RECITALS

Pursuant to a petition filed March 31, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regards to the discontinuance and denial of Medical Assistance, a telephone hearing was held on May 28, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly discontinued BC Core Plus, denied BC Plus, and denied MA-Disability with a six month spenddown deductible of \$2,215.98.

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: Simone Johnson
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was certified as eligible and receiving BadgerCare Core Plus benefits in at least March, 2014.
2. A change in Wisconsin law ended the BadgerCare Core Plus program effective April 1, 2014, and replaced it with a new variant of BadgerCare Plus that allows childless adults to be non-financially eligible for MA, but the applicant must have income at or below 100% of the Federal Poverty Level; i.e. for a one person household that amount is \$972.50.

3. The petitioner has gross monthly income for BC Plus testing purposes of \$981 in Social Security Disability Insurance Benefits.
4. On March 7, 2014, the Department issued a Notice to the petitioner informing her that her BadgerCare Plus Core Plan eligibility would end, effective April 1, 2014; that she was denied BadgerCare Plus effective April 1, 2014, due to income in excess of that program's limits; and that she could become eligible in the six month period of April 1 – September 30, 2014, for Elderly Blind Disabled MA (under the MA – Disability program) if she met a six month spenddown deductible of \$2,215.98 in that time frame.
5. On March 31, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting all three negative actions taken by the Department effective April 1, 2014; her benefits were continued pending the hearing decision.
6. For Elderly Blind & Disabled MA, the petitioner's countable net income after application of the sole applicable deduction of a standard \$20 disregard is \$961, which exceeds the EBD-MA income limit, which is \$591.67 for one person, by \$369.33 per month.
7. \$369.33 times 6 months equals \$2,215.98.

DISCUSSION

The petitioner was receiving BadgerCare Plus *Core Plan* coverage. That program, however, discontinued effective April 1, 2014. Now any childless adult may be non-financially eligible, but the income limit allowable is lower than before. *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. The petitioner's income is, alas, \$981. She is not eligible for BadgerCare Plus. There is no exception under law for these circumstances. Rather, the petitioner is just over the income limit.

The petitioner testified that he has also been adjudicated to be a disabled person. The Department therefore tested her for MA-Disability benefits as well. However, here she was found to be non-financially eligible because she is disabled, but financially ineligible because her income exceeds the income limit for MA-Disability too. That income limit is \$591.67 for a one person household. After a standard \$20 disregard applied this type of MA (Elderly, Blind and Disabled MA classes), her income is \$369.33 per month over the income limit. See, Exhibit #1, pp. 15-16. This means that she can only become eligible for MA-Disability when she meets a six month spenddown by incurring or paying medical bills that total 6 months times \$369.33 per month, or \$2,215.98. *BCPEH*, §§39.4; 15.3.8; 24.5.1.

The petitioner *was* 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. However, in the petitioner's case, that enrollment window has passed. She would be well advised to contact the federal Marketplace to ascertain when the next open enrollment period begins and obtain information on the types of coverage that may be obtained and cost levels under the federal program.

CONCLUSIONS OF LAW

1. The Department has correctly discontinued the petitioner's BadgerCare Core Plus, and denied her requests for BadgerCare and MA-Disability due to income in excess of program limits.
2. The Department has correctly determined that the petitioner must meet a six month spenddown deductible of \$2,215.98 in order to become eligible for MA-Disability under Elderly Blind & Disabled MA program rules.

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 10th day of June, 2014

\sKenneth D. Duren, Assistant Administrator
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 June 10, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability