



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/156922

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on June 11, 2014, at Eau Claire, Wisconsin. A hearing scheduled for May 14, 2014, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner is entitled to BadgerCare Plus after April 1, 2014..

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: Becky Arbs

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. There are three persons in the petitioner's household.
3. The petitioner earns \$2,240 per month.

4. For a three-person household, 100% of the federal poverty level is \$1,649.17. *BadgerCare Plus Handbook*, § 50.1.
5. The county agency notified the petitioner in a notice dated February 4, 2014, that “[a]s of Mar. 01, 2014, at least one person in your home will have a change in health care benefits.” The notice later indicated that the change affected the petitioner and that she would have to begin paying a \$67 monthly premium.
6. The county agency notified the petitioner in a notice dated February 17, 2014, that “[a]s of Apr. 01, 2014, at least one person in your home will have a change in health care benefits.” The notice later indicated that the change affected the petitioner and that the reason for the change was that the “income we counted for your household is over the program limit.”
7. The county agency notified the petitioner in separate notices dated March 24 and March 25, 2014, that “[a]s of May. [sic] 01, 2014, at least one person in your home will have a change in health care benefits.” The notice later indicated that the change affected the petitioner and that the reason for the change was that the “income we counted for your household is over the program limit.”
8. The agency ended the petitioner’s BadgerCare Plus benefits as of April 1, 2014.

DISCUSSION

BadgerCare Plus is Wisconsin’s medical assistance program for those who are not elderly or disabled. Effective April 1, 2014, the governor and legislature lowered the amount of adjusted gross income a household can have and still be eligible for benefits from 200% to 100% of the federal poverty level for adults. Wis. Stat. § 49.471(4)(a). The county agency seeks to end the petitioner’s eligibility because her household income exceeds 100% of the federal poverty level. For a three-person household, the size of the petitioner’s, 100% of the federal poverty level is \$1,649.17 per month. *BadgerCare Plus Handbook*, § 50.1. The agency ended the petitioner’s benefits on April 1, 2014, because her monthly income exceeded \$2,000.

The petitioner does not dispute that her income is over the limit. Rather, she contends that the notices were misleading. She was originally told her benefits would end because of changes in the program at the end of last year. The governor and the legislature then extended the previous version of BadgerCare Plus until April 1, 2014. The agency notified her on February 17, 2014, that her benefits would end on April 1, 2014. However, she received two notices in March that indicated that she would have a change of benefits on May 1, 2014. She assumed that the previous version of the program had again been extended and she remained eligible through April. Because of this, she obtained medical care that cost over \$1,000 that she must now pay for herself. She requests that her benefits continue through April as the last two notices implied that they would.

I agree that the notices are confusing enough that a reasonably intelligent lay person would believe that benefits would continue through April. Nevertheless, I have no equitable powers that would allow me to consider the fairness of the situation and must uphold the law as it is written. The previous version of the BadgerCare Plus program did end on April 1, 2014, and I cannot resurrect it, even if the Department’s confusing notices caused the petitioner to seek medical care that was not covered. If she wishes to challenge the agency’s action, she must appeal to a circuit court, which does have equitable powers. I note that I do not know if a judge would exercise equitable powers for her.

CONCLUSIONS OF LAW

The petitioner’s BadgerCare Plus benefits ended on April 1, 2014.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 25th day of July, 2014

\sMichael D. O'Brien
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 July 25, 2014.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability