



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/158235

PRELIMINARY RECITALS

Pursuant to a petition filed June 9, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on July 14, 2014, at Balsam Lake, Wisconsin.

The issue for determination is whether the county agency properly notified the petitioner that it was ending her BadgerCare Plus benefits.

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: Melissa McQuay
Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Polk County.
2. The Central Data Processing Unit notified the petitioner on February 17, 2014, that her BadgerCare Plus would end on April 1, 2014, because new rules put her income over the program's limit.

3. On March 17, 2014, the CDPU notified the petitioner in regard to “Health Care” that “[t]here have been no changes to this benefit.”
4. On March 26, 2014, the CDPU notified the petitioner that “[a]s of May 01, 2014, at least one person in your home will have a change in health care benefits. Please see Your Health Care Benefits Page.” The only change noted on that page indicated that the petitioner would not be enrolled as of May 1, 2014, because “[t]he income we counted for your household is over the program limit.”
5. The petitioner’s income exceeded 100% of the federal poverty level throughout April 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 to 100% of the federal poverty level for adults and 300% for children. Wis. Stat. § 49.471(4)(a). Central Data Processing Unit notified the petitioner on February 17, 2014, that her BadgerCare Plus would end on April 1, 2014, because her income exceeded the new limits. However, the CDPR then sent her two more notices about her benefits. On March 17, 2014, it notified in regard to “Health Care” that “[t]here have been no changes to this benefit.” Nine days later, it informed her that “[a]s of May 01, 2014, at least one person in your home will have a change in health care benefits. Please see Your Health Care Benefits Page.” The only change noted on that page indicated that she would not be enrolled as of May 1, 2014, because “[t]he income we counted for your household is over the program limit.” After receiving these two notices, she assumed that she was eligible until May 1, 2014, and obtained dental work in April. Because she was actually ineligible, the program will not pay for this care. She requests that she be reinstated in the program for April 2014.

These 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. Any judge who does review the matter may consider whether the notice was adequate under 42 CFR §§ 435.919 and 431.210, but that too would be entirely within the judge’s discretion.

### CONCLUSIONS OF LAW

The petitioner was ineligible for BadgerCare Plus benefits in April 2014 because her income exceeded 100% of the federal poverty level.

**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 31st day of July, 2014

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\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 31, 2014.

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