FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

BCS/158269

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a telephone hearing was held on July 07, 2014.

The issue for determination is whether the respondent correctly terminated petitioner's enrollment in BadgerCare Plus.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Irene
Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Iron County. He was certified as eligible and receiving BadgerCare Plus benefits from October 1, 2012, through March 31, 2014.
2. The petitioner has household monthly income for BadgerCare Plus testing purposes of $1,520.00.

3. Prior to April, 2014, petitioner requested and received Prior Authorization (PA) for dentures. The PA required the extraction of teeth, followed by a mandatory 6-week healing period between edentulation and final impressions.

4. On February 17, 2014, the Department issued a Notice to the petitioner informing him that his BadgerCare Plus (BC+) eligibility would end, effective April 1, 2014, due to income in excess of that program's limits.

5. On April 25, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the negative action taken by the Department effective April 1, 2014.

DISCUSSION

Prior to April 1, 2014, the income limit for BC+ was 200% of the FPL. State law changed effective April 1, 2014. As of that date the limit for caretaker parents was reduced to 100% of the FPL, which, for a two-person household, is $1,310.83. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the MA Handbook, Appendix 50.1 for the limit.

The respondent notified the petitioner in February of 2014, that his BC+ coverage would be ending effective April 1, 2014, due to household income exceeding program limits. Petitioner testified that he was confused by the notice, as he and his son share the same name. I note that the February 17, 2014 notice does appropriately reference both "[redacted]" and "[redacted]." Exhibit 2. I find that the notice was proper.

The problem is that the Division of Hearings and Appeals has absolutely no authority or equitable powers that would allow me to consider the fairness of the situation; I must apply the law as it is written. The income limit is 100% of the federal poverty limit, and if income is above the limit the person is ineligible for BC+. There is nothing in the statute or policy that would give me authority to continue petitioner's eligibility. Therefore, I must find that the county agency correctly terminated petitioner's BC+ benefits. If the petitioner disagrees with this decision he can appeal it to a circuit court, which does have equitable powers.

Finally, I note that petitioner's appeal arises from his approved prior authorization for dentures. This PA was approved by the Department of Health Services' Office of the Inspector General. The PA approval consisted of three parts: (a) extraction of teeth; (b) six-week healing time period; and (c) dentures. Petitioner underwent the extraction, and during the six-week healing period he learned that his BC+ coverage had ended. He testified that his provider informed him that he was no longer covered, and therefore could not continue with the dentures. The Office of the Inspector General noted no denial of services or coverage; it appears that the provider simply stopped services when BC+ coverage was no longer in place. As a result, there was no denial or other such action by the Office of the Inspector General that the petitioner could appeal.

It is also not established by the record before me that the petitioner is not entitled to receive coverage for his dentures. Wisconsin law provides that,

> Reimbursement for dentures and partial dentures includes 6 months postdelivery care. If a prior authorization request for these services is approved, the recipient shall be eligible on the date the authorized treatment is started, which is the date the final impressions were taken. **Once started, the service shall be reimbursed to completion, regardless of the recipient's eligibility.**

Wisconsin Administrative Code §107.07(3)(b)(1) (emphasis added). Petitioner has been left in a terrible bind wherein his compliance with the dictates of the approved PA resulted in the extraction of his teeth, but no dentures to replace them. The Administrative Code provision cited above may provide petitioner's

provider with grounds to move forward with the dentures, and petitioner is encouraged to share this Decision with his provider. If the provider seeks coverage of the PA request, and is subsequently denied, the petitioner will have an opportunity to then appeal that denial.

CONCLUSIONS OF LAW

The agency correctly closed petitioner's BC+ because his income was over the limit beginning with the change in state law April 1, 2014.

THEREFORE, it is **ORDERED**

That 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 21st day of July, 2014.

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\sPeter McCombs
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 21, 2014.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability