



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]

DECISION

BCS/158594

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 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 August 13, 2014, by telephone.

The issue for determination is whether the Department correctly denied the petitioner’s BCP certification effective June 1, 2014, due to her status as a Medicare Part A or B recipient.

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: Jose Silvestre, 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]), age 40, is a resident of Milwaukee County.
2. Prior to February 2014, the petitioner had an open BCP case for herself. Her case was reviewed in January 2014, and the parties agree that she had no minor children in her household from at least

that point forward. The petitioner is disabled, on Medicare, and has household income of \$830 (unearned) monthly.

3. On February 4, 2014, the Department issued written notice to the petitioner advising that her BCP would be discontinued effective March 1, 2014. The basis for discontinuance was that the petitioner is on Medicare. In lieu of BCP, the petitioner was placed on Elderly/Blind/Disabled (EBD) MA, with a six-month deductible of \$1,309.98. The notice advised the petitioner to appeal from her BCP discontinuance by April 16, 2014. *See*, Exhibit D, notice.
4. On May 22, 2014, the Department issued written notice to the petitioner advising that she continued to not be eligible (“as of June 01, 2014”) for BCP, due to her status as a Medicare recipient.
5. The petitioner appealed on June 23, 2014.

DISCUSSION

There is a 45-day limit for filing a Medicaid/BCP appeal. Wis. Stat. § 49.45(5). The petitioner missed that deadline with respect to the February 4, 2014 notice, so this Judge lacks jurisdiction to review the BCP discontinuance effective March 1, 2014. I do have jurisdiction to review the Department’s position that the petitioner continued to be ineligible for BCP from June 1, 2014, forward, as this appeal was filed within 45 days of June 1.

Effective April 1, 2014, due to a change in federal and state law, childless adults in Wisconsin became eligible for BCP if several conditions were met. One condition is that the household income must be under 100% of the federal poverty level (FPL). The petitioner meets that condition.

Another condition, based on updated federal rules, is that the adult cannot be a Medicare recipient:

§435.119 Coverage for individuals age 19 or older and under age 65 at or below 133 percent FPL.

- (a) *Basis*. This section implements section 1902(a)(10)(A)(i)(VIII) of the Act.
- (b) *Eligibility*. Effective January 1, 2014, the agency must provide Medicaid to individuals who:
 - (1) Are age 19 or older and under age 65;
 - (2) Are not pregnant;
 - (3) *Are not entitled to or enrolled for Medicare benefits under part A or B* of title XVIII of the Act;
 - (4) Are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part; and
 - (5) Have household income that is at or below 133 percent FPL for the applicable family size.

[emphasis added]

42 C.F.R. § 435.119(b). The petitioner receives Medicare benefits, so there is no requirement that Wisconsin provide her with the BCP-type of Medicaid. Wisconsin has chosen not to do so. *BadgerCare Plus Eligibility Handbook*, § 2.1; Wisconsin State Plan Amendment #13-021-MM1, p. S32, approved 10/25/2013 (effective 1-1-2014), at <http://www.medicaid.gov>, “State Innovations – State Plan Amendments” link (viewed in September 2014).

CONCLUSIONS OF LAW

1. The petitioner’s appeal is untimely with respect to discontinuance of her BCP effective March 1, 2014.
2. The Department correctly denied the petitioner’s request for BCP effective June 1, 2014, due to her status as a recipient of Medicare Part A or B.

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.

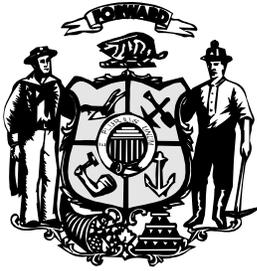
APPEAL TO COURT

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 17th day of September, 2014

\sNancy J. 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 September 17, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability