



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted] # [Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION ON REHEARING

BCS/159191

PRELIMINARY RECITALS

Pursuant to a petition filed July 22, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was scheduled for August 12, 2014. The petitioner did not appear, and a dismissal order was issued. The petitioner then filed a rehearing request, which was granted. The hearing was then held on September 24, 2014, by telephone.

The issue for determination is whether the Department correctly discontinued the petitioner's BCP during his incarceration.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted] # [Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Bob Uebele, ES Worker
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Prior to June 2014, the petitioner had an open BCP case as a household of one person. On May 19, 2014, the Department issued written notice to the petitioner advising that his BCP case would close effective June 1, 2014. The Department’s basis for discontinuance was that the petitioner was incarcerated. The petitioner appealed.
3. The petitioner’s incarceration began on April 15, 2014. It is expected to end on November 2 or 3, 2014. The petitioner has receives his meals through the jail, and has not been released for work under the Huber law.

DISCUSSION

A person who is incarcerated (non-Huber) or institutionalized for 30 days or more is not eligible to receive BCP. *BadgerCare Plus Eligibility Handbook*, §3.6, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> . The theory behind the policy is that the person’s medical needs are being met by the jail, so BCP is a duplicative benefit. There is no dispute as to the duration or fact of the petitioner’s incarceration here.

The federal Medicaid rules declare that a state cannot get Medicaid/BCP money for a person who is an inmate in a public institution, with a few exceptions that are not applicable here:

§435.1009 Institutionalized individuals.

(a) FFP is not available in expenditures for services provided to—

(1) Individuals who are inmates of public institutions as defined in §435.1010; or ...

§435.1010 Definitions relating to institutional status.

For purposes of FFP, the following definitions apply:

...

Institution means an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor.

...

Public institution means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term “public institution” does not include—

- (a) A medical institution as defined in this section;
- (b) An intermediate care facility as defined in §§440.140 and 440.150 of this chapter;
- (c) A publicly operated community residence that serves no more than 16 residents, as defined in this section; or
- (d) A child-care institution as defined in this section with respect to—

- (1) Children for whom foster care maintenance payments are made under title IV-E of the Act; and
- (2) Children receiving AFDC-foster care under title IV-A of the Act.

...

Inmate of a public institution means a person who is living in a public institution. An individual is not considered an inmate if—

(a) He is in a public educational or vocational training institution for purposes of securing education or vocational training; or

(b) He is in a public institution for a temporary period pending other arrangements appropriate to his needs.

42 C.F.R. §§ 435.1009(a) & .1010.

Thus, the closure was correct. The petitioner may reapply for BCP benefits as soon as he is released from jail.

CONCLUSIONS OF LAW

- 1. The Department correctly discontinued BCP benefits to the petitioner.

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 25th 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 25, 2014.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability