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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/159280

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 14, 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 20, 2014, by telephone.

The issue for determination is whether the petitioner was properly subject to an RRP for nonpayment of a July 2014 BCP premium.

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: Ms. Pang Thao-Xiong, IM - 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]) is a resident of Milwaukee County.
2. BCP is a Wisconsin variant of MA for low-income parents with minor children or pregnant women. Prior to March 2014, the petitioner had an open BCP case with her husband and two minor children. The case underwent a periodic review in February 2014.

3. On February 20, 2014, the Department mailed written notice to the petitioner advising that the BCP adult coverage was ending effective March 1, 2014, due to excess household income.
4. In March, the petitioner supplied updated income verification. On March 26, 2014, the Department issued written notice to the household, advising that adult BCP would re-open effective April 1, 2014, *without a premium*. A notice was not sent to the petitioner advising that she had a premium liability for March 2014.
5. On July 3, the petitioner contacted the local agency with questions. She was advised that she owed a \$100 BCP premium for March and another \$100 premium for July 2014. On July 7, 2014, the petitioner contacted the local agency and requested that the household's adults not be given BCP for July 2014.
6. On July 7, 2014, the Department issued written notice to the petitioner advising that the children remained eligible for BCP without a premium. The notice also advised that the adults were BCP-eligible due to "extension status" from increased earned income. Finally, the notice advised that the adults were "not enrolled" in BCP because they had not paid their BCP premium for July (amount unspecified).
7. During hearing preparation, the Department determined that the petitioner did not owe a \$100 BCP premium for March 2014.
8. From April 2014 through July 6, 2014, the Department did not issue a notice to the petitioner advising that the premiums were unpaid and that a restrictive re-enrollment period would be imposed.

### DISCUSSION

BadgerCare Plus is a Wisconsin variant of MA for families with minor children, and pregnant women. Wis. Stat. §49.471; *BCP Eligibility Handbook (BCPEH)*, § 1.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> .

The petitioner does not contest that the household's income went above the 133% of federal poverty line by June 2014. For the household's adults, BCP financial eligibility exists, in general as follows:

The following individuals must pay a premium to become or remain eligible for BC+ unless exempt:

1. Children in families with income over 200% FPL (under non-MAGI rules) or 201% (under MAGI rules),
2. Parents, stepparents and caretaker relatives with income over 100% FPL in a BC+ Extension that starts on or after April 1, 2014,
3. [n/a]

**Note:** Effective with BC+ Extensions that begin on or after April 1, 2014, parents, stepparents and caretaker relatives with income between 100% and 133% FPL in a BC+ Extension will be subject to premiums starting in the seventh calendar month of their Extension. October 2014 is the first month for which premiums will be charged for non-exempt adults in an Extension with income at or below 133% FPL.

*BCPEH*, §19.1.

When a household does not timely make a premium payment, the adults are barred from re-enrolling for three months. The initial payment was due by July 1, and if it had been made, the subsequent months'

payments would have been due by the 10<sup>th</sup> of each benefit month. *BCPEH*, § 19.6. The policy on the restrictive re-enrollment is as follows:

A member for whom a premium is owed for the current month who leaves BC+ by quitting or not paying a premium may be subject to a restrictive re-enrollment period. A *restrictive re-enrollment period (RRP)* means the member cannot re-enroll in BC+ for a certain number of months from the termination date while their income remains high enough to owe a premium, unless they meet a good cause exemption. Effective January 1, 2014, children can make late premium payments at any time during their 3 month RRP. Effective April 1, 2014, adults can make late premium payments at any time during their 3 month RRP.

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### **19.8.3 Good Cause for Non-Payment**

Do not apply an RRP for non-payment if good cause exists. Good cause reasons for not paying the BC premium are:

1. Problems with the financial institution.
2. **CARES** problem.
3. **Local agency** problem.
4. Wage withholding problem.
5. Fair hearing decision.

The member must still pay the arrears before eligibility will begin again.

*BCPEH*, §§19.11, 19.8.3.

The March 26 notice that re-opened the case for April, says nothing about extension status. It appears that the first notice informing the petitioner that she was in extension status was dated July 7. Even if the petitioner was supposed to pay a July premium, it would have been impossible for her to pay it before July 1, because she was not notified of that obligation until July 7. The petitioner's situation justifies a good cause exception for her non-payment. Imposition of the RRE for the adults in her case was incorrect.

### **CONCLUSIONS OF LAW**

1. The petitioner had good cause for non-payment of a BCP premium for July 2014. Imposition of restrictive re-enrollment on the adults in the petitioner's BCP case was incorrect.

**THEREFORE, it is**

**ORDERED**

That the petition is *remanded* to the Department with instructions to enter a good cause determination for the petitioner's BCP premium non-payment for July 2014. This action shall be taken within 10 days of the date of this Decision.

## 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 2nd day of October, 2014

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\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 October 3, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability