



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/159317

PRELIMINARY RECITALS

Pursuant to a petition filed July 22, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on September 04, 2014, at Waupaca, Wisconsin. At the request of the parties, the record was held open for two weeks for the submission of written closing argument to DHA.

The issue for determination is whether the county agency correctly denied the petitioner’s application for BadgerCare (BC) Plus coverage for herself and her husband during the months of June and July, 2014 (including petitioner’s emergency room visit on July 14, 2014), due to her household income above the BC income eligibility limit for the adults in her BC household.

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: Susan Ziegeweid, ESS
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County who resides with her husband, [REDACTED], and their two children, AE and JE.

2. On June 13, 2014, the petitioner filed her application for BadgerCare (BC) Plus and FoodShare (FS) benefits for her household of four. See Exhibit 1.
3. The county agency sent a June 19, 2014 notice to the petitioner requesting verification of her husband's (██████████'s) employment and income at ██████████ during June, 2014 by July 14, 2014. See Exhibit 2.
4. ██████████'s employer verified that he received gross earned income of \$4,656.00 during June, 2014, and \$4,481.77 during July, 2014.
5. On July 10, 2014, the county agency sent a "generic" BC coupon to the petitioner. That coupon provided some information about the BC premium, the due date, type of payment accepted and where to mail the coupon, but was not a determination of approval or denial of BC benefits for petitioner or her family. See Exhibit 3.
6. The county agency sent a July 11, 2014 Notice of Action Needed which provided information regarding the initial premium that must be paid by July 24, 2014 for BC coverage for **only her two children** (not petitioner or her husband). See Exhibit 4.
7. On July 14, 2014, petitioner went to the emergency room for medical treatment, and incurred a bill of \$2,187.83.
8. During June, 2014, petitioner's household had counted income of \$4,045.45. During July, 2014, petitioner's household had counted income of \$4,481.77 which was her husband's check of \$1,581 (received July 3, 2014) for his last paycheck from that employer after his job ended, and \$2,912 for his vacation pay out from his employer).
9. The counted BC adult income eligibility limit for the months of June and July, 2014 was \$1,987.50 for the petitioner and her husband. See Exhibit 7.
10. The county agency sent a July 16, 2014 Notice of Decision to the petitioner stating that her June 13, 2014 BC application for herself and her husband was denied for the period of June 1, 2014 through July 31, 2014, due to household income above the BC income limit as indicated in Finding of Fact #8 and #9 above. See Exhibit 7.
11. That same July 16, 2014 notice stated that petitioner's two children were eligible for BC benefits during June and July, 2014 with payment of petitioner's payment of a \$20 BC premium for the children.
12. The petitioner's entire household was eligible for BC as of August 1, 2014 due to a reduction in household income.

DISCUSSION

During the September 4, 2014 hearing and in her closing statement, petitioner made clear that she was upset that she was not covered by BadgerCare benefits for her July 14, 2014 emergency room bill. She alleged that she was misled by the county agency into believing that the July 10, 2014 generic coupon (Exhibit 3) resulted in her assuming that she was covered by BC. See Finding of Fact #5 above. The petitioner was quite assertive in her arguments, but she was unable to establish with any reliable evidence that the county agency incorrectly denied her BC coverage during the period in question.

The county agency representative, ESS Susan Ziegeweid, responded that there was nothing on that generic coupon to indicate approval or denial of BC for petitioner or her children. Furthermore, Ms. Ziegeweid correctly argued that the agency's July 11, 2014 notice clearly stated that the BC premium was only for the petitioner's two children (not petitioner or her husband). She also responded that petitioner could have called the agency's "Call Center" to determine whether she was covered by BC prior to going

to the emergency room on July 14, 2014. The July 16, 2014 notice (Exhibit 7) further confirmed that petitioner and her husband were not eligible for BC during June or July, 2014, due to household income above the BC income limit. See Findings of Fact #5 - #11 above.

The petitioner questioned why her husband's vacation payout should be counted as income to her BC household. The BadgerCare Handbook provides that vacation payout is counted as earned income in the month in which that income is received per BadgerCare Handbook, 16.4. As a result, the county agency correctly counted petitioner's \$2,912 vacation pay out from his employer as income to the petitioner's household.

The petitioner asserted basically a "reliance" argument that it was unfair that her July 14, 2014 emergency room was not covered by BC because the generic coupon (Exhibit 3) was not sufficiently clear or detailed that she assumed she was covered by BC benefits. As there is no basis in law or policy to provide BC coverage of her emergency room bills, the petitioner must rely on equity. As an Administrative Law Judge (ALJ), I do not have authority to decide cases based on equity. Case law in Wisconsin has recognized that the powers of administrative agencies are limited to those expressly granted by the legislature or necessarily implied by the statutes. DOR v. Hogan, 198 Wis. 2d 792, 816, 543 N.W.2d 825 (1995), provides in pertinent part:

Few principles are as well established as the proposition that administrative agencies, as entities created by the legislature as part of the executive branch of government, have only such powers as are expressly granted to them by the legislature, or as may be necessarily implied from the applicable statutes...In determining the nature and scope of an agency's powers, its enabling statutes are to be 'strictly construed to preclude the exercise of a power not expressly granted,' and '[a]ny reasonable doubt as to the existence of an implied power should be resolved against [the agency]. (Emphasis added).

The legislature has not expressly conferred equitable powers upon ALJs or administrative agencies. Chapter 227, Wis. Stats., authorizes state agencies such as the Division of Hearings and Appeals to hold contested case hearings. It also empowers such agencies to make findings of fact and conclusions of law, and to decide cases based on the relevant facts and law. There is nothing in Chapter 227, Wis. Stats. that expressly authorizes agencies such as this one, to apply equitable principles such as the equitable estoppel claim raised in this case. Administrative agencies are required to accord "fair hearings" in the sense that they must accord due process with an even handed application of the law to the facts in similar cases. Neither the statutes nor case law clearly accord administrative agencies equitable powers. I conclude that even if the argument is based on equity, I do not have the authority to exercise equitable powers. Accordingly, based upon the above, I must conclude that the county agency correctly denied the petitioner's application for BadgerCare (BC) Plus coverage for herself and her husband during the months of June and July, 2014 (including petitioner's emergency room visit on July 14, 2014), due to her household income above the BC income eligibility limit for the adults in her BC household.

CONCLUSIONS OF LAW

The county agency correctly denied the petitioner's application for BadgerCare (BC) Plus coverage for herself and her husband during the months of June and July, 2014 (including petitioner's emergency room visit on July 14, 2014), due to her household income above the BC income eligibility limit for the adults in her BC household.

THEREFORE, it is

ORDERED

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 3rd day of November, 2014

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 3, 2014.

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