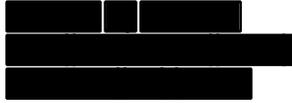




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/159458

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on September 10, 2014, at Madison, Wisconsin.

The issues for determination are (1) whether petitioner's appeal was timely filed, and (2) whether the Department correctly discontinued the petitioner's adult BCP coverage effective April 1, 2014.

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: Mr. Tory World, ES Spec.

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Dane County.

2. Prior to April 2014, the petitioner received BCP coverage for herself and her children. In 2013, the Wisconsin statutes were changed to allow only adults with household income at or below 100% of the federal poverty level to be covered by BCP from April 1, 2014 onward.
3. On March 17, 2014, the Department issued written notice to the petitioner, advising that there was a change in her BCP case. The notice states that six persons (including the petitioner) were covered by BCP for March 2014, subject to payment of a \$346.00 premium. It also says that as of April 1, 2014, only four household members are covered, and the petitioner's name is not one of the four listed. Further, on page three of the notice, it states:

Who is not enrolled? As of Apr. 01, 2014/BadgerCare Plus/ [REDACTED], [REDACTED]:
The income we counted for your household is over the program limit. ...You may be able to buy private health insurance through the federal Health Insurance Marketplace. ...
4. On March 24, 2014, the Department issued written notice to the petitioner advising that four persons in the household were covered by BCP for May 2014. The notice also advised that the petitioner was not eligible for BCP in *May*, due to excess income.
5. The petitioner required and received medical care costing \$1,033 on April 3, 2014. She acquired private health insurance by the date of hearing, but had no private coverage for April 2014.
6. The petitioner's household consists of two adults and four children.
7. The adjusted gross income relied upon by the Department in its determination was \$5,246.49 monthly. This income amount is at 196% of the FPL for a household of six persons.
8. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on July 30, 2014.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA/BCP must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed *120* days after the date of the action (April 1, 2014). Thus, it was untimely, and no jurisdiction exists for considering the merits of the case. As a courtesy to the petitioner, however, additional information as to what happened is included below.

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program's nonfinancial eligibility standards were changed effective April 1, 2014, to include adults who do not have minor children in their home. Wis. Stat. § 49.45(23); 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 2.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in October 2014). The petitioner meets the nonfinancial eligibility tests for the program.

The petitioner must also pass an income test, and she did not do so. An eligible *adult* applicant cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL), effective April 1, 2014. Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount is \$972.50 monthly for a household of one, and \$2,664 for a household of six persons in 2014. *Id.*, § 50.1. Children are subject to a higher income limit.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

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 14th day of October, 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 October 14, 2014.

Dane County Department of Human Services
Division of Health Care Access and Accountability