



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/165343

PRELIMINARY RECITALS

Pursuant to a petition filed April 11, 2015, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) in regard to Medical Assistance (MA), a hearing was held on July 1, 2015, by telephone. A hearing set for June 3, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the Division of Hearings and Appeals has authority to order petitioner to be exempt from a BadgerCare Plus (BC+) Health Maintenance Organization (HMO).

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Lucy Miller

Division of Health Care Access and Accountability
P.O. Box 6470
Madison, WI 53718-6470

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marquette County.
2. Petitioner initially gained eligibility for BC+ coverage for childless adults effective April 1, 2014. At some point thereafter petitioner received a notice that she was being assigned to the Molina HMO, once of three HMOs that cover Marquette County. Petitioner contacted a representative at

the BC+ Program and was told to file for a continuity of care exemption from the HMO requirement. An exemption was granted for four months.

3. In early 2105 petitioner was informed that she would be put in the HMO effective March 1, 2015. She again filed a continuity of care exemption. By a notice dated March 27, 2015, the DHCAA denied the request.
4. Petitioner's primary care doctor for the past several years, from prior to petitioner's MA eligibility, is in Stoughton, Wisconsin; he is part of the Physicians' Plus HMO. Physicians' Plus does not cover Marquette County.

DISCUSSION

Generally an MA recipient has the right to choose her MA provider if the provider is authorized by the MA program. Wis. Admin. Code, §DHS 104.01(4). That choice is limited, however, by the Department's "Prudent Buyer" limitation. Wis. Admin. Code, §DHS 104.035. The prudent buyer limitation essentially is the requirement that MA recipients become members of HMOs.

Thus, as seen in the BC+ Handbook, Appendix 38.4, members are required to be enrolled in an HMO if they reside in HMO service areas. If only one HMO covers a county, a member can decline to be in the HMO, but if there are at least two HMOs in a county, the member must enroll in one of them. The Handbook provision provides that if the member believes that she might qualify for an HMO exemption, she should contact the HMO Enrollment Specialist at (800) 291-2002. I am uncertain if petitioner did that.

The Department does provide an exemption for continuity of care. As explained by Nurse Miller, the exemption is for short term treatment by a specialist for a specific condition. It is not meant to be for an ongoing, long term exemption for a primary care doctor, and that is why the DHCAA denied the request. The denial letter informed petitioner that she would appeal the denial, but that leads to a major problem. I cannot find any authority for the Division of Hearings and Appeals to provide a remedy for petitioner.

Wis. Admin. Code, §DHS 104.02(5)(b) provides that an MA recipient may appeal actions that result in "denial, discontinuation, termination, suspension or reduction" of her MA benefits. None of those actions occurred here. Petitioner still is entitled to full MA coverage with no discontinuance or reduction in services. The Handbook provisions on HMO coverage also do not provide for an appeal concerning HMO coverage. The Handbook essentially says that Department representatives will assist members with HMO issues, but it does not say that the members can appeal issues with that assistance. Thus even though the notice from the DHCAA tells petitioner that she can appeal the denial of the exemption, this office does not have such authority to fashion a remedy to the denial.

I conclude that I do not have the authority to grant petitioner her desired remedy, which is to allow her to be exempt from the HMO requirement in order to keep the primary doctor she utilized prior to her becoming eligible for MA. Essentially the result is that if petitioner chooses to receive BC+ coverage, she must do so under BC+ coverage requirements. It likely was an error to grant petitioner the initial HMO exemption, and it would be a further error to grant it again.

If petitioner has not contacted the HMO Enrollment Specialist, I urge her to do so. It appears that her only possible remedy is through that person.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals does not have authority to order a BC+ recipient to be exempt from the program HMO requirement.

THEREFORE, it is

ORDERED

That 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 6th day of July, 2015

\sBrian C. Schneider
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 July 6, 2015.

Division of Health Care Access and Accountability