



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: BCS - 215656

PRELIMINARY RECITALS

Pursuant to a petition filed on October 28, 2024, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on December 12, 2024, by telephone.

The issue for determination is whether the agency correctly disenrolled Petitioner from the BadgerCare Plus program effective November 1, 2024, for failing to supply requested proof documents and having income in excess of program limits.

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, WI 53703

By: Lyeshia Griffin
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Wendy I. Smith
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and a recent recipient of MA benefits under the BadgerCare Plus (BCP) program in a household of two with his spouse [REDACTED].
2. On September 9, 2024, Petitioner submitted a change report to the agency to document that his spouse was turning 65 years old and becoming eligible for Medicare. Petitioner reported earned income from [REDACTED] and his spouse's Social Security benefits, as well as assets in two IRAs and income from other dividends and interest.
3. Case notes for Petitioner's case indicate that his case pended for verification of income and assets with a due date of September 30, 2024. No proof documents were received by this deadline.
4. In a notice dated October 10, 2024, Petitioner was advised that his enrollment in the BCP program would end on November 1, 2024, because Petitioner failed to provide the requested proof of assets in an IRA at [REDACTED] Bank and proof of his employment income at [REDACTED] by the stated deadline, and because his household income increased. For the purposes of calculating BCP eligibility, Petitioner's household counted monthly income was listed as \$3,820.19 from earned and unearned income.
5. On October 21, 2024, Respondent received four paystubs for Petitioner's employment at [REDACTED]. Petitioner's average work hours per week are 23.89 hours at a regular rate of \$15.00 per hour, 4.51 hours at a premium rate of \$3.00 per hour, and an average pretax deduction of \$167.34. Petitioner's monthly gross income from [REDACTED] is \$1,487.52 before pretax deductions.
6. In a notice dated October 24, 2024, Petitioner was again advised that his BCP enrollment would end on November 1, 2024, because he failed to provide the requested information about his IRA at [REDACTED] Bank and because his household income increased. For the purposes of calculating BCP eligibility, Petitioner's counted monthly income was listed as \$2,908.83 from earned and unearned income, including dividend, interest, and other income.
7. For the month of September, [REDACTED] received \$1,350.30 in Social Security benefits on or about October 23, 2024. Beginning for the month of October, [REDACTED] receives \$1,525.00 per month in Social Security benefits.
8. Petitioner now appeals to the Division of Hearings and Appeals (DHA). In a Request for Fair Hearing completed by Petitioner and received by the DHA on October 28, 2024, Petitioner checked the box YES indicating that he wanted his benefits to continue pending appeal.
9. Respondent manually processed a continuation of BCP benefits for the month of November while Petitioner's appeal was pending and issued a Notice of Approval of Benefits dated November 6, 2024.

DISCUSSION

Petitioner's Disenrollment from BCP

BadgerCare Plus (BCP) is a state and federal program that provides health coverage for low-income Wisconsin residents. To be eligible for BCP, a person must meet certain financial and non-financial requirements, including verification of income of all members of a household. *BadgerCare Plus Handbook (BCP Handbook)* § 9.9.6; *see also* Wis. Admin. Code DHS § 103.04(6). The current income limit for childless adults is 100% of the Federal Poverty Level (FPL), or \$1,703.33 per month for an assistance group of two. *BCP Handbook* at §§ 16.1, 50.1.

In this matter, the issue for determination is whether the agency was correct in terminating Petitioner's enrollment in BCP as of November 1, 2024, when Petitioner argues it should have been extended through November 30, 2024. Petitioner does not contest that his income renders him financially ineligible for BCP beyond the month of November.

First, Petitioner argues that he never received a request for proof documents before being disenrolled. The case notes for Petitioner were supplied by the agency as evidence for this hearing. The case notes document Petitioner's call into the agency on September 9, 2024, to make a change report and that his case was pending verification of assets and income with a due date of September 30, 2024. However, this is the only documentation of this verification request. The actual request notice purportedly mailed to Petitioner was not produced by Respondent as evidence for the hearing. Given that lack of production, Petitioner's claim that he never received that request is credible.

The agency may seek to verify a member's eligibility information when it is notified of a change, but it is required to notify the member *in writing* of the specific verification required and allowed a minimum of 20 days to provide it. *Id.* at § 9.4. The first disenrollment notice issued October 10, 2024, found Petitioner ineligible for being over income and for not responding to a verification request. Without an adequate opportunity to verify his income information after receipt of written notice, the disenrollment notice was improper.

After receiving this notice, Petitioner supplied his paystubs from [REDACTED] on or about October 21, 2024. The evidence submitted into the record shows that Petitioner's earned income from [REDACTED], minus pretax deductions, plus his wife's monthly Social Security benefits place his household income above the limit for the BCP program. In the notice dated October 24, 2024, which the agency issued after reviewing Petitioner's submitted paystubs, Petitioner's counted monthly income was listed as \$2,908.83 from earned and unearned income. This well exceeds the monthly income limit of \$1,703.33. Petitioner does not contest his financial ineligibility beyond the month of November.

On the matter of income calculation, Petitioner argues that his spouse's initial Social Security payment of \$1,350.30 that she received on or about October 23, 2024, for the month of September should be counted for the month of September, not the month of October when it was received by [REDACTED]. The agency's representative at the hearing testified that the September benefit was updated in Petitioner's case to apply to the month of September, not October.

As the October 10, 2024, notice of disenrollment was defective for failure to provide Petitioner with adequate opportunity to provide verification information, I will next address whether the agency properly terminated Petitioner's benefits as of November 1, 2024, under the notice sent out on October 24, 2024. When the agency takes an adverse action against an enrolled member to stop or reduce benefits, the member has a right to adequate and timely notice of the adverse action. *Id.* at § 29.1.3; Wis. Admin. Code DHS § 103.09(4).

An “adequate” notice must contain the following:

- A statement describing the intended action
- The reason(s) for the intended action, including a citation to the law, regulation, rule, or policy that supports or requires the action
- An explanation of the right to a fair hearing and how to request one
- A statement on the availability of free representation
- A statement that if a hearing is requested before the action's effective date, benefits will continue until the hearing decision is made
- A statement that the member may have to repay any benefits continued during the appeal if the hearing decision isn't in their favor or they abandon or withdraw the hearing request
- The telephone number and the name of the agency to contact for more information

BCP Handbook at § 29.1.4.1.

A “timely” notice must be mailed to the recipient at least 10 calendar days before the effective date of the proposed action. Wis. Admin. Code DHS § 103.09(4).

As the October 10 notice is invalid, the controlling notice of adverse action is the October 24 notice. The October 24 notice appears to be adequate but not timely. With a disenrollment date of November 1, 2024, this notice does not provide Petitioner with at least 10 calendar days before the effective date of the action. As such, the notice should have been issued with an effective date of December 1, 2024. This matter is remanded to the agency to ensure that Petitioner’s BCP enrollment is extended through the month of November 2024.

Petitioner’s Continuation of Benefits Pending Appeal

Finally, Petitioner argued at the hearing that he did not want to continue his benefits pending a hearing. This is contrary to the box he checked on his Request for Fair Hearing form submitted to the DHA. This form clearly marked YES for extending his benefits pending appeal. He was advised in the form that overpayment of benefits may be recovered by the agency if he selected this option. At the hearing, Petitioner claimed that he never wanted to extend his benefits beyond November 2024.

Generally, an individual who seeks a fair hearing of a discontinuance, reduction, suspension, or change in benefits may have their benefits continued pending the hearing decision if the hearing request was filed before the effective date of the action. Wis. Admin. Code HA § 3.05(5). The *BCP Handbook* Section 29.2.4 provides additional guidance:

DHA may order a member’s BadgerCare Plus or FPOS benefits to continue while a decision on the hearing is pending. The IM agency must comply with DHA's initial order until otherwise notified or the member waives this continuation of benefits. The IM agency must inform members of their right to waive continued benefits.

DHA can reverse its continuance order only when the hearing was not requested prior to the action's effective date. If DHA does not order benefits reinstated and the agency believes that the member is entitled to them, the agency must notify DHA.

Once benefit continuation has begun, the IM agency must maintain those benefits until DHA orders a change or some other change in eligibility occurs.

According to the agency representative's testimony at hearing and documents submitted into the record, Petitioner's BCP benefits were continued pending appeal. Petitioner stated at the hearing that he wanted to waive his right to continue receiving BCP benefits as of December 1, 2024.

Petitioner's waiver of his continuation of benefits is effective as of the date of the hearing. This matter is remanded to the agency with instruction to halt Petitioner's continuation of benefits coverage pending appeal as of December 12, 2024.

CONCLUSIONS OF LAW

1. Respondent improperly disenrolled Petitioner from the BadgerCare Plus program effective November 1, 2024, as it failed to provide a written request for verification of income, issued an invalid notice of disenrollment dated October 10, 2024, and failed to provide timely notice of an adverse action in its notice dated October 24, 2024.
2. Petitioner elects to waive his continuation of benefits coverage pending appeal as of the date of the hearing, December 12, 2024.

THEREFORE, it is

ORDERED

That the matter is remanded for the Respondent agency and ordered to take the following action: (1) extend Petitioner's BadgerCare Plus enrollment from November 1, 2024, through November 30, 2024, and (2) halt Petitioner's continuation of benefits coverage pending appeal as of December 12, 2024, in accordance with Petitioner's waiver on the record. Respondent shall complete these actions 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, 4822 Madison Yards Way, 5th Floor North, 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.

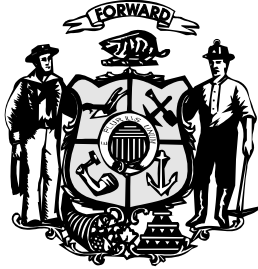
APPEAL TO COURT

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, **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 Milwaukee,
Wisconsin, this 27th day of December, 2024

\s _____
Wendy I. Smith
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 December 27, 2024.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability