



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

BCS/172403

PRELIMINARY RECITALS

Pursuant to a petition filed February 29, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on April 14, 2016, at Port Washington, Wisconsin.

The issue for determination is whether the Ozaukee County Department of Social Services (the agency) correctly ended the Petitioner's BadgerCare+ benefits effective March 1, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name and address]

Respondent:

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

By: [Redacted], Economic Support Analyst
Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Ozaukee County.

2. Petitioner was arrested on December 27, 2015, and has been in continuous custody at the [REDACTED] since that time. (Testimony of Petitioner)
3. On February 17, 2016, the agency sent the Petitioner a notice, advising him that his BadgerCare+ benefits would be ending effective March 1, 2016, because he is incarcerated. (Exhibit 4)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 29, 2016. (Exhibit 1)

### DISCUSSION

It is undisputed that the Petitioner has been incarcerated in a county jail from December 27, 2015, to the present.

The BadgerCare+ eligibility handbook discusses the effects of incarceration on BadgerCare+ eligibility:

#### **3.6 Inmates**

An inmate is residing in a public institution on an involuntary basis. For example, a prisoner in a jail, prison, or other correctional facility is considered an inmate. A staff person voluntarily residing in a public institution is not considered an inmate. An individual voluntarily residing in an institution while waiting for other living arrangements to be made that are appropriate to the person's needs is not considered an inmate. An individual who is legally confined to his or her home by a monitoring device, such as an ankle bracelet, is not considered an inmate for the purposes of BadgerCare Plus. Individuals who are inmates of a public institution are not eligible for BadgerCare Plus unless they meet the Huber criteria or the following two exceptions:

- **Prenatal exception:** Pregnant women may apply for and enroll in the BadgerCare Plus Prenatal Program (see [Chapter 41 BadgerCare Plus Prenatal Program](#)) while they are inmates.
- **Inpatient exception:** If an inmate resides outside a public correctional institution for more than 24 hours at any one time, he or she can qualify for BadgerCare Plus during that time period if he or she meets all other eligibility criteria. For example, if an inmate of a public institution is admitted as an inpatient to a medical institution for 24 hours or more and is otherwise eligible, manually certify him or her for BadgerCare Plus from the admission date through the discharge date.

*(Emphasis added)*

#### **3.6.3 Huber Law**

Huber Law prisoners who are released from jail for the purpose of attending to the needs of their families can become eligible for BadgerCare Plus if they:

- Intend to return to the home, and
- Continue to be involved in the planning for the support and care of the minor children.

Huber Law prisoners who are released for a purpose other than attending to the needs of their families are not eligible for BadgerCare Plus. They should be considered absent parents.

At the time the agency issued the notice of decision in mid-February, the Petitioner had been an inmate at the [REDACTED] for almost 60-days. Petitioner obviously does not meet the prenatal exception and there is no assertion, nor any evidence, that the Petitioner was in the hospital for 24 hours or more. Further, there is no assertion and no evidence that the Petitioner was granted Huber Release to care for minor children. Consequently, the Petitioner was not eligible for BadgerCare+ benefits.

**CONCLUSIONS OF LAW**

The agency correctly ended the Petitioner’s BadgerCare+ benefits, effective March 1, 2016.

**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 Milwaukee,  
Wisconsin, this 18th day of April, 2016

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\sMayumi M. Ishii  
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 April 18, 2016.

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