



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCS/142622

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 25, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Dept. of Human Services to deny Medical Assistance (MA), a hearing was held on October 30, 2012, at Madison, Wisconsin. Hearings set for August 30 and September 27, 2012 were rescheduled at the petitioner's request.

The issue for determination is whether petitioner and his wife are eligible for MA.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Jessica Cooper  
Dane County Dept. of Human Services  
1819 Aberg Avenue  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner applied for BadgerCare Plus (BC+) MA on July 16, 2012. By a notice dated July 23, 2012, the county granted BC+ for petitioner's children, but denied it for him and his wife.

3. Petitioner's family was lawfully admitted for residence in this country from Sri Lanka on April 30, 2012.

### DISCUSSION

Prior to 1996, aliens lawfully admitted to the United States for permanent residence were eligible for MA immediately upon admission to the country. See 42 C.F.R. §435.406(a)(2). In 1996 the United States Congress made a number of changes to welfare law which included the restriction of alien eligibility for welfare programs. Generally, now, United States citizenship is required for a person to be eligible for MA. See Wis. Adm. Code, §DHS 103.03(2). An alien lawfully admitted for permanent residence is ineligible unless he meets one of several exceptions. Those exceptions are set out in §DHS 103.03(2) by their federal statutory citations, but they are detailed in the BC+ Handbook, Appendix 4.3. The exceptions include refugees, asylees, Cubans, Haitians, Amerasians, military personnel, and veterans.

Other than the exceptions listed above, a person lawfully admitted for permanent residence is eligible for MA only if five years have passed since the date of entry (or is in the U.S. military or the spouse of someone in the military).

The BC+ Handbook, App. 4.3.3, sets out the policy for eligibility under the "five -year" residence rule:

Certain non-citizens who arrived in the U.S. on or after August 22, 1996 are subject to a five year ban on receiving federal benefits (including BadgerCare Plus and Medicaid), other than emergency services. For these immigrants the five year ban is calculated beginning on the day on which an individual gains qualified immigrant status.

A "qualified alien" is someone who is lawfully admitted for permanent residence in this country. 8 U.S.C. 1641.

The immigrant exclusion also applies to Family Planning services. Handbook, App. 40.4, referring to App. 2.1. The exclusion does not apply to emergency services or pre-natal services for pregnant women. Handbook, App. 2.1.

### CONCLUSIONS OF LAW

Petitioner and his wife are ineligible for MA and Family Planning Services because they have not resided in this country for five years.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 1st day of November, 2012

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Brian 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 November 1, 2012.

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