



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/143153

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Waushara County Human Services in regard to Medical Assistance, a hearing was held on September 27, 2012, at Wautoma, Wisconsin.

The issue for determination is whether the Department erred in terminating petitioner from BC+ because he is not a caretaker parent.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Roxanne Binkowski
Waushara County Human Services
205 W Elm
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waushara County. He lives on [REDACTED].

2. Petitioner applied for FoodShare and BadgerCare+ benefits on October 14, 2011. At that time he reported that his household was a two-person household comprised of himself and his daughter KM who was 17 years old. [REDACTED] is KM's mother.
3. KM resides with [REDACTED] on [REDACTED]. She sleeps regularly at the home of [REDACTED]. She keeps her clothing and belongings at [REDACTED]'s home. Her driver's license lists the [REDACTED] home as her residence. KM stops at petitioner's house several times each week to feed horses or to sometimes visit her father and stay for dinner. She stays overnight no more than one night per week. She has had friends over at petitioner's home on only one occasion.
4. In April 2012, O'Brien and Associates conducted an investigation and concluded that KM does not reside with petitioner and that petitioner's household is a one -person household.
5. Effective June 1, 2012 the Department closed petitioner's BadgerCare+ case due to its determination that he was not a caretaker of his minor daughter.
6. Petitioner filed a timely appeal.

DISCUSSION

To be eligible for MA, an adult male under age 65 must be disabled, blind, or the caretaker of minor children. Wis. Stat., §§49.46(1) and 49.47(4). To qualify as disabled, a person must meet the definition of that term as it is used for SSI purposes. Wis. Stat., §49.47(4)(a)4.

To be eligible for BC+, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Adm. Code, §DHS 103.03(1)(f)1. The BC+ Handbook, Appendix 2.2.1.2, provides as follows:

When the natural or adoptive parents of a child do not live together, and have joint placement arrangements for the child (through a mutually agreed upon arrangement or court order), only one parent can be determined eligible at a time unless there is reasonably equivalent placement. Reasonably equivalent placement means that the child is residing with each parent at least 40% of the time during a month.

If the child is not residing with both parents at least 40% of the time, only the parent with the greater percentage of the placement time may apply on behalf of the child and/or for him or herself as the caretaker relative of that child.

KM does not live with petitioner 40% of the time. I have to conclude that petitioner is not eligible for BC+.

CONCLUSIONS OF LAW

The agency correctly closed petitioner's BC+ because he now lives primarily with his mother, and petitioner thus is not the caretaker of a child.

THEREFORE, it is

ORDERED

That this appeal is 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 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, Room 651, 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 4th day of October, 2012

John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals

c: Waushara County Human Services - email
Department of Health Services - email



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The preceding decision was sent to the following parties on October 4, 2012.

Waushara County Human Services
Division of Health Care Access and Accountability