



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/143311

PRELIMINARY RECITALS

Pursuant to a petition filed August 22, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance (MA), a hearing was held on October 02, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's MA, specifically BadgerCare Plus (BCP) eligibility effective August 1, 2012, due to noncooperation with the child support agency.

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: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochran
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. The petitioner is an ongoing recipient of MA.

3. On July 12, 2012 the county agency received a notification from the child support agency that petitioner should be sanctioned for failing to cooperate with child support.
4. On July 16, 2012, the county agency issued written notice to the petitioner advising that her MA/BCP would be discontinued effective August 1, 2012 for failing to cooperate with child support.
5. The agency's basis for discontinuance was that the petitioner failed to cooperate with the child support agency in establishing the paternity of her child, [REDACTED]. The petitioner contests this rationale.
6. The petitioner named one man, "Arthur V." for purposes of this hearing, as the father. This man was excluded by paternity testing as the father. There is no declared legal father for this child .
7. At some point thereafter, the petitioner was asked to name another potential father. She gave the first name of one man that she considered another possibility. She had no other information than his first name. The interviewer concluded that the petitioner was not being cooperative, and forwarded a sanction request to the agency.

DISCUSSION

BadgerCare Plus (BCP) is an expansion of the Wisconsin Medical Assistance program meant to provide insurance for children under 19 and their parents. See Wis. Stat. §49.471 and *BadgerCare Plus Eligibility Handbook (BCPEH)*, §1.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. In order to qualify for BCP, an individual must meet certain financial and nonfinancial criteria. In the instant case, the county agency determined that the petitioner was no longer eligible for BCP as she did not meet a BCP *nonfinancial* eligibility requirement that requires she cooperate with the child support agency in paternity establishment. The BCP authorizing statute does not discuss paternity cooperation as a condition of eligibility. The paternity establishment/child support statute does cross-reference §49.471, and requires that any person receiving BCP must cooperate (unless she identifies good cause for noncompliance) by "making a good faith effort to provide [requested, necessary] information within 7 days after receiving a request under this paragraph." Wis. Stat. §49.22(2m)(a).

The *BCPEH* policy instruction in this matter is as follows:

5.2.1 Introduction

Unless the person is exempt, has good cause for refusal to cooperate (see 5.3), each applicant/member that is referred, must, as a condition of eligibility, cooperate in:

1. Establishing the paternity of any child born out of wedlock for whom BC+ is requested or received, and
2. Obtaining medical support for the applicant and for any child for whom BC+ is requested or received.

Cooperation includes any relevant and necessary action to achieve the above. As a part of cooperation, the applicant may be required to:

1. Provide verbal or written information known to, possessed by, or reasonably obtainable by the applicant.
2. Appear as a witness at judicial or other hearings or proceedings.

3. Provide information, or attest to the lack of information, under penalty of perjury.
4. Pay to the CSA any court ordered medical support payments received directly from the absent parent after support has been assigned.
5. Attend office appointments as well as hearings and scheduled genetic tests.

...

5.2.2 Failure to Cooperate

The CSA determines if there is non-cooperation for individuals required to cooperate.

The IM agency determines if good cause exists (see 5.3). If there is a dispute, the CSA makes the final determination of cooperation. The member remains ineligible until s/he cooperates, establishes good cause, or cooperation is no longer required.

There was no dispute that the petitioner first named Arthur V. as the father, and that he was excluded by testing as the father. The petitioner then supplied a name of another man, first name only, as a potential father. She testified credibly that this was the only information she had from the conception occurring approximately 3 years ago. No one from the child support agency appeared at the hearing. No other information was provided to show that petitioner was being less than honest, that she had reason to know the name of the father and that she was not providing it, or being otherwise uncooperative. She has provided the verbal information as to the paternity of her child to the best of her knowledge. The language "Provide information, or attest to the lack of information, under penalty of perjury" infers that her lack of information can be reduced to writing under the penalty of perjury, and then if the child support agency has information that petitioner's lack of information is perjurious, a sanction would be appropriate at that time, let alone a criminal felony charge. There is no information that petitioner was requested to attest to her lack of knowledge or refused to do that. In sum, I do not find that the agency has supported a finding that petitioner was uncooperative, and therefore the sanction was placed in error.

CONCLUSIONS OF LAW

1. The child support agency failed to show that it correctly determined that the petitioner failed to cooperate with a child support agency.
2. The agency incorrectly discontinued the petitioner's MA eligibility effective August 1, 2012 due to noncooperation with the child support agency.

THEREFORE, it is

ORDERED

The matter is remanded to the agency to take the administrative steps necessary to remove the child support sanction, redetermine petitioner's eligibility for MA from August 1, 2012 forward, and to issue a notice of decision regarding same. Because the agency may require verifications to redetermine benefits, I am ordering that these actions shall be taken within thirty (30) days of the date of this decision. If no verifications are necessary, the actions shall be taken within ten (10) days of the date of this decision.

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, 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 Milwaukee,
Wisconsin, this 24th day of October, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

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The preceding decision was sent to the following parties on October 24, 2012.

Kenosha County Human Service Department
Division of Health Care Access and Accountability