



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/144776

PRELIMINARY RECITALS

Pursuant to a petition filed October 26, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on November 21, 2012, at Waupaca, Wisconsin.

The issue for determination is whether respondent erred in terminating petitioner's BadgerCare Plus (BC+) benefits effective November 1, 2012.

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: Susan Ziegeweid

Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County.
2. Petitioner has received BC since his application on or about April 19, 2012. By a notice dated October 19, 2012, the county informed petitioner that BC+ would end November 1, 2012, because he does not care for a child under age 19. Exhibit 3.

3. Petitioner is not married to the mother of his minor son, [REDACTED] [REDACTED] Ms. [REDACTED] has primary physical placement of the minor child in Minnesota, and the minor child is enrolled in school there. The child stays with petitioner on weekends, holidays, school vacations, and other extended period in the summer. See, Exhibit 5. Petitioner's minor child receives Medicaid Assistance with his mother through Minnesota's medical assistance program .
4. Benefits were continued pending this decision.

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.

Petitioner's minor son does not live with petitioner 40% of the time. Petitioner conceded, in correspondence to respondent dated October 9, 2012, that he has placement of his minor son approximately 35% of the time. At hearing, petitioner was unable to establish that his initial assessment of 35% was incorrect, nor did he present any substantive information demonstrating that he had placement of his minor son at least 40% of the time. While I do not doubt the sincerity of petitioner's testimony indicating that he was unaware that his son's mother was receiving medical assistance benefits in Minnesota, I have to conclude that petitioner is not eligible for BC+.

CONCLUSIONS OF LAW

The agency correctly closed petitioner's BC+ case because his minor son 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 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 9th day of January, 2013

\sPeter McCombs
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 January 9, 2013.

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