



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/145298

PRELIMINARY RECITALS

Pursuant to a petition filed November 16, 2012, under Wis. Stat., §49.45(5)(a), to review a decision by Columbia County Health & Human Services to discontinue Medical Assistance (MA), a hearing was held on December 19, 2012, at Portage, Wisconsin.

The issue for determination is whether petitioner was required to report the income of her son's father. It is noted that individuals' initials are utilized throughout the decision for confidentiality reasons.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Atty. Hal Menendez
Legal Action of Wisconsin, Inc.
31 South Mills Street
Madison, WI 53715

Respondent:

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

By: Jeanette Gessner

Columbia County Health & Human Services
P.O. Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County who received BadgerCare Plus (BC+) MA until the action appealed in this case.

2. Since 2008 petitioner has lived with her now 15-year-old son in a home owned by E.T. E.T. is not the older son's father. On February 25, 2012, petitioner gave birth to N.T. Although she reported the birth of the child she did not clearly report that his father was in the home.
3. In August, 2012, petitioner did a review. In the review she noted that E.T. was N.T.'s father and was in the home. The agency requested E.T.'s employment information, which was not provided. The agency then closed BC+ effective September 1 for all members of the household except the baby because information was not provided.
4. On August 23, 2012, petitioner reported that E.T. left the home on that date. The agency then reopened BC+ for a three-person household for September (E.T. was excluded by request). The agency also requested that O'Brien and Associates investigate the situation.
5. On September 2, 2012, the investigator went to the home. A number of people were present doing work on the home. E.T. was present and told the investigator that he lived in the home.
6. The agency again requested E.T.'s income verification with a due date of September 14, 2012. When the verification was not received the agency closed BC+ effective October 1, 2012 for all but the baby, by a notice dated September 18, 2012. Petitioner did not request assistance to obtain the verification.

DISCUSSION

To be eligible for BadgerCare, a person must be under age 19, a custodial parent living with a child, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. Parents and their children who live together must be included in the household's fiscal test group. Admin. Code, §DHS 101.03(65).

An MA recipient is required to verify information that can affect eligibility. Admin. Code, §DHS 102.03. If the household fails to verify required information by the time limit, the agency may deny the benefits. Admin. Code, §DHS 102.03(1). The agency should assist the applicant if she requests assistance. BC+ Handbook, App. 9.8.

The Handbook, App. 9.11.4, provides as follows:

Deny or reduce benefits when all of the following are true:

1. The member has the power to produce the verification.
2. The time allowed to produce the verification has passed.
3. The member has been given adequate notice of the verification required.
4. You need the requested verification to determine current eligibility. Do not deny current eligibility because a member does not verify some past circumstance not affecting current eligibility.

The issue is whether E.T. remained in the home when the agency took the action to request verification and subsequently close petitioner's BC+. I conclude that based upon the information in the agency's record at the time, the action was correct.

On September 2, 2012, E.T. himself told the investigator that he lived in the home that he owned. Petitioner argues that statement to be hearsay, but I find that it is reliable as being supported by other evidence (in particular E.T.'s presence at the home that day, that he owns the home, that petitioner

acknowledged E.T.'s statement during the hearing, and that no alternative, verifiable residence was provided), and that it in essence is a statement against his own interest. While a statement against interest typically can be used only if the person is unavailable to testify under Wis. Stat., §908.045(4), in this case neither side called E.T. as a witness nor explained his absence. I conclude that his presence, at least as of September, 2012, was sufficiently established.

With E.T.'s presence established, the agency correctly sought his income verification and subsequently closed the case when it was not provided.

Petitioner must reapply for BC+ (and it was mentioned during the hearing that she had done so). At this point the only proof that E.T. is not living in the home is petitioner's assertion. The agency would have every right to request additional verification, not the least of which would be an affirmative statement from E.T. that he is living elsewhere.

CONCLUSIONS OF LAW

The agency correctly closed petitioner's BC+ for failure to verify because the best evidence in its possession was that the father of petitioner's younger child lived in the same home as petitioner and the child.

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 7th day of January, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 7, 2013.

Columbia County Health & Human Services
Division of Health Care Access and Accountability
ham@legalaction.org