



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/145633

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, and following several rescheduling requests by the petitioner, a hearing was held on March 11, 2013, at Fond Du Lac, Wisconsin. At the petitioner's request, the record was held open for a period of ten days to allow the parties to submit additional information. Said information was timely received.

The issue for determination is whether the county agency correctly discontinued the petitioner's Medical Assistance effective November 30, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Deb Bohlman

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.

2. Prior to November 30, 2012, the petitioner was certified for BadgerCare Plus (BCP). In October, 2012, the county agency issued written notice to the petitioner advising that her BCP benefits would end November 30, 2012. Exhibit 3. The petitioner timely appealed from that notice.
3. There was no reunification plan in place for the petitioner and her minor child as of November, 2012, and no evidence of a reunification plan was proffered at or following hearing.
4. A Permanency Plan dated February 20, 2013, and executed by petitioner on that date, states that the permanence goal is adoption. See, Exhibit 5, p. 4.

DISCUSSION

BadgerCare Plus is an expansion of the Wisconsin Medical Assistance program meant to provide insurance for children under 19 and their parents. *BadgerCare Plus Eligibility Handbook (BCPEH)*, 1.1. There are two major BCP benefit plans. To be eligible for the BCP Standard Plan (full MA benefits), a family cannot have income greater than 200% of the poverty line, and cannot have access to a certain level of employer-based coverage. Wis. Stats. §49.471(8). The BCP Benchmark Plan (limited services) is available to children in households with income above 200% of the poverty line, and to self-employed parents/caretakers.

In the instant case, the county agency determined that the petitioner was no longer eligible for BadgerCare Plus. The agency's reasoning was that she did not meet a BCP *nonfinancial* eligibility requirement because she no longer had a minor child in her home, and was not working toward unifying the family by complying with a permanency plan.

There is no dispute that her child was out of the home. The child is presently in the care and custody of the child's paternal aunt via court-ordered Kinship. The agency was contacted by the child's social worker on October 24, 2012, and informed that the parents were no longer engaged in a reunification plan. Based on that information, the agency discontinued the petitioner's BCP certification as of November 30, 2012.

The agency correctly relies on the following authority for its action:

2.1 BC+ Non-Financial Program Requirements

The following individuals are non-financially eligible for BC+ :

1. Children under 19.
2. Pregnant Women.
3. Parents/Caretakers of children under 19 years of age, including some parents and caretakers whose children have been removed from the home and are in the care of the child welfare system. ([Chapter 10](#)).
4. Young adults exiting out of home care (such as foster care).
- ...

10.1 Child Welfare Parent or Caretaker Relative

Qualifying parents and caretaker relatives of children who have been temporarily removed from the home and are in the care of the child welfare system may be eligible for BC+ benefits if they meet the following requirements:

1. Their child was placed (by the child welfare agency) in:
 - a. Foster care, (both IV-E and non IV-E).
 - b. Court Ordered Kinship Care.
2. The caretaker relative is cooperating with a permanency plan, the goal of which is family reunification. Cooperation is always presumed unless the court has determined that reunification will no longer be the permanency goal; and
3. The caretaker relative meets all other BC+ financial and non-financial requirements.

The parents/caretaker relative who meet the above requirements are considered caring for a child who has been temporarily removed from the home. Even though the child's eligibility is not determined on the caretaker relative's case, the child is included in the group size in the eligibility determination and any unearned income the child has is budgeted.

BCPEH, §§2.1, 10.1. The above policy language is consistent with the BCP statute's nonfinancial eligibility requirements for parents:

(4) General eligibility criteria; applicable benefits.

(a) Except as otherwise provided in this section, all of the following individuals are eligible for the benefits described in s. 49.46 (2) (a) and (b), subject to sub. (6) (k):

...

4. An individual who satisfies all of the following criteria:

a. The individual is a parent or caretaker relative of a child who is living in the home with the parent or caretaker relative or who is temporarily absent from the home for not more than 6 months or, if the child has been removed from the home for more than 6 months, the parent or caretaker relative is working toward unifying the family by complying with a permanency plan under s. 48.38.

Wis. Stat. §49.471(4)(a)4a.

The respondent submitted written comments from petitioner's child's social worker, dated October 24, 2012, indicating:

[Petitioner] got evicted from their apartment, cancelled today's visit with the kids, did not show for their [illegible] planning meeting..., and continue to have dirty UA's. We did have court where the goal was moved to straight adoption, reunification was taken off.

Exhibit 2, p. 4. While the record was held open post-hearing respondent submitted written comments from petitioner's child's social worker, dated March 5, 2013, indicating:

Just wanted to keep you updated that we had the Admin Review today for [petitioner's husband and petitioner]. Reunification was NOT put back on the plan. Plan remains only Adoption/TPR.

Exhibit 4.

At hearing, the petitioner argued that the Permanency Plan does reference reunification with her son, L.W. I have reviewed the document thoroughly, and note that under the Permanency section, item 3.a. provides, in pertinent part:

Permanence Goal: Adoption

...

Rationale for choosing this goal:

[L.W.] was placed in relative care on 9/15/2009. He remained in that placement until 6/8/11, at which time he was reunified with his parents. L.W. remained with his parents until October 2011, when he was again placed in relative care and has been in that placement since. L.W. has been in out-of-home care for 18 out of the last 22 month. In total L.W. has been in out-of-home care 37 out of 51 months. L.W. deserves permanency, there[fore] adoption is the permanence goal. [Petitioner and her husband] can continue to work towards reunification.

Exhibit 5.

Whether referred to as a permanency plan, as under statute, or a permanency goal, under the BadgerCare policy handbook, the respondent clearly established via testimony and written evidence that the goal being pursued for L.W. in October, 2012, and the goal being pursued in March, 2013, are one-in-the-same: adoption. The petitioner's child's social worker may encourage the petitioner to pursue reunification, but the parent's past failures to progress toward reunification have directly resulted in the goal of adoption, as specified in the Permanency Plan. While the door may not be entirely closed to the petitioner with regard to reuniting with her child, the rules of BadgerCare eligibility plainly specify that she is no longer eligible for such coverage when reunification is no longer the plan and/or goal. Thus, based on the current state of affairs, I conclude that the county agency's decision to discontinue the petitioner's BCP coverage as of November 30, 2012, was correct.

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner's BCP coverage as of November 30, 2012, because the petitioner's minor child is not residing with her, the absence is expected to exceed six months, and there is no evidence that the parent is working toward family reunification under a s.48.38 permanency plan.

NOW, THEREFORE, it is **ORDERED**

That the petition herein be 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 22nd day of April, 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 April 22, 2013.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability