



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCS/145662

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 30, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on February 6, 2013, at Janesville, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner's BCP effective December 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: Ch. Sheppard, ES Spec.  
Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Prior to December 2012, the petitioner received BCP for herself and her minor son, RO. On October 12, 2012, she reported to the agency that she was living with [REDACTED] [REDACTED] who

is both her ex-husband and the father of RO. Verification of Mr. [REDACTED]'s income was requested, and eventually received. On October 15, 2012, the petitioner reported that she was not residing with her ex-husband.

3. The agency requested an investigation, which was performed by O'Brien and Associates. The investigator's conclusion was that the petitioner has been and continues to reside with her ex-husband at [REDACTED]. The agency then included the ex-husband's income as part of the petitioner's household income, leading to the conclusion that the adults in the household are not eligible for BCP due to excess income.
4. On November 12, 2012, the Department issued written notice to the petitioner advising that the adults in the household were not eligible for BCP effective December 1, 2012. The basis for discontinuance was excess household income.
5. The petitioner, her ex-husband and RO were living together at [REDACTED] from at least October 2012 to the present. In October 2012, the ex-husband had gross earned income of \$4,229.60, which exceeds the relevant income limit of \$3,181.66.

**DISCUSSION**

If the petitioner and [REDACTED] were residing together in October 2012, the county agency was required to add him to the petitioner's BCP household, because he is the father of a minor child living in the petitioner's household. The Wisconsin Department of Health Services' BCP household composition policy states:

**2.2 BC+ TEST GROUP**

The **BC+ Test Group** includes the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. Inclusion in the Test Group is determined by qualifying relationships and legal responsibility.

Anyone in the home who meets the criteria of being in the BC+ Test Group, is always included in the group whether or not s/he requested BC+.

...

The primary person who applies for BC+ must meet one of the following requirements in order to form a BC+ Test Group. The primary person must either be:

1. A parent residing with his or her child under age 19 or residing with a spouse and his or her child who is under age 19.

...

The following are the relationships and legal responsibility which determine who is in the BC+ Test Group :

**2.2.1 Parents**

A parent is any natural or legally adoptive mother or father. A parent can be any age. There can be more than one parent of a certain gender in a household.

The BC+ Test Group for a primary person who is residing with his or her own child or with a spouse and the spouse's child will include the following individuals:

1. The primary person and the primary person's spouse.
2. A child under age 19 of the primary person or the primary person's spouse.
3. A co-parent of a primary person's child or the co-parent of the spouse's child.
4. Any spouse of a co-parent.
5. Any child under age 19 of a co-parent.
6. The other parent of a co-parent's child.
7. A child of the primary person's child or the spouse's child.

...

A parent residing with his or her child under the age of 19 must be in the same BC+ Test Group. This is true even when the legal custody of the child has been transferred to someone living outside of the home. The only exception is when someone's parental rights have been legally terminated. ...

*BadgerCare Plus Eligibility Handbook*, § 2.2, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. See also Wis. Stat. § 49.471(1)(b), (c), (f),(i), & (4)(a)4a.

The petitioner admitted at hearing that she is residing with the father of RO while she endures recovery from several surgeries. She asked why her ex-husband is included in her BCP group when he has no marital relationship with her. The answer is that the other parent of RO, whether ever married or not, must be included in the same BCP group as RO. Thus, it is the parental status, not the marital status, which caused this outcome. The agency has acted correctly here.

The petitioner mentioned at hearing that the ex-husband's income has gone down (this was not reported until hearing). The petitioner is encouraged to make the necessary report to the agency and verify the income reduction. Depending upon the amount of the income reduction, it is possible that the petitioner may be found eligible again for BCP going forward.

### **CONCLUSIONS OF LAW**

1. The county agency correctly combined the petitioner, her ex-husband, and their child-in-common into one BCP household effective December 1, 2012.
2. The agency correctly discontinued BCP to the petitioner's household effective December 1, 2012, due to excess household income.

**THEREFORE, it is**

**ORDERED**

That the petition 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 7th day of February, 2013

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\sNancy J. Gagnon  
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 February 7, 2013.

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