



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/147327

PRELIMINARY RECITALS

Pursuant to a petition filed February 14, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on March 12, 2013, at Oshkosh, Wisconsin. At the request of the parties, the record was held open until April 16, 2013 for the submission of consecutive briefs by the parties to the Division of Hearings and Appeals (DHA). Both parties timely submitted their briefs to DHA which are received into the hearing record.

The sole remaining issue for determination is whether the county agency should have continued petitioner's BadgerCare Plus benefits until Social Security has issued a disability determination regarding the petitioner's Social Security October 30, 2012 disability application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Kirsten Navarrette
Legal Action of Wisconsin
404 N Main St #702
Oshkosh, WI 54901

Respondent:

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

By: Janet Hertzberg, ESS

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 47 year old resident of Winnebago County who has a daughter Emma.
2. The petitioner received BadgerCare Plus benefits for herself and her daughter as of July, 2012 due to residing with her child under 19 years of age.
3. During the March 12, 2013 hearing, petitioner stipulated that she was no longer disputing the January 15, 2013 notice to discontinue BC benefits as of February 1, 2013 due to Emma turning 19 years of age.
4. On October 30, 2012, petitioner filed an application with the Social Security Agency (SSA) for Social Security Disability benefits.
5. The county agency sent a January 15, 2013 notice to the petitioner stating that her BadgerCare Plus benefits would discontinue effective February 1, 2013, due to petitioner's daughter turning 19 years of age.
6. The petitioner filed an appeal on February 14, 2013 with the Division of Hearings and Appeals (DHA) regarding the February 1, 2013 discontinuance of her BC Plus benefits.
7. The petitioner was only disputing whether her BC Plus benefits should have continued as of February 1, 2013 until Social Security determined her Title 2 and Title 16 disability application status.
8. The petitioner did not apply at the county agency for presumptive disability status prior to the February 1, 2013 discontinuance of her BC benefits.
9. As of the March 12, 2013 hearing date, SSA had not yet issued its decision regarding the petitioner's October 30, 2012 SSA disability application.

DISCUSSION

The county agency representative stated that petitioner did not meet any of the non-financial bases for MA eligibility of elderly, blind or disabled as of February 1, 2013, per Medicaid Eligibility Handbook, 4.1. As indicated in Finding of Fact #3 above, petitioner stipulated that she was not contesting that due to her child turning 19 years of age, petitioner was no longer eligible on that basis for BC benefits for residing with her child under 19 years of age. The petitioner did not dispute that she did not file any application for presumptive disability in order to speed up the disability determination process by the Disability Determination Bureau (DDB).

In her briefs and during the hearing, Attorney Navarrette argued unconvincingly that HCFA State Medicaid Manual Guideline 3272.2 applied to the instant case regarding continued benefits for a person whose MA had been discontinued. However, section 3272.2 does not apply to the facts of the instant case. Section 3272.2 applies to "If an individual receiving Medicaid **based upon disability** is determined by SSA not to be disabled under the SSI disability standard. . ." (Emphasis added). In this case, petitioner was NOT an individual receiving MA based upon disability, petitioner was a person categorically receiving MA due to residing with her child under 19 years of age.

Ms. Navarrette also contended that a Washington County circuit court case ([REDACTED]) provided an alleged "guideline" such that a person remained eligible for continued MA benefits pending the outcome of the final SSA disability decision. First, that circuit court decision is not precedential, and is thus not mandatory to follow in this case. Second, the facts of that 1997 case appear to be significantly different

to those of the instant case, and thus are not on point with the instant issue even if the decision had been a precedential. Moreover, two DHA decisions (MAP-69/83285 (2007) and MAP/146557 (2013) address more closely the instant issue. However, in both those DHA decisions, the petitioner had already been found disabled by DDB, and then the county discontinued petitioner's MA as no longer disabled. In the instant case, DDB as of the end of the hearing and the briefing period had never been found disabled for MA eligibility purposes. As such this case can clearly be distinguished from those prior DHA decisions. While Ms. Navarrette was a zealous advocate, she was unable to establish with any on point legal authority or policy that her client was non-financially eligible for continued BC benefits as of February 1, 2013. Accordingly, based upon the above, I conclude that the county agency was correct to deny petitioner's request for continued BadgerCare Plus benefits as of February 1, 2013 until Social Security has issued a disability determination regarding the petitioner's October 30, 2012 disability application.

CONCLUSIONS OF LAW

The county agency was correct to deny petitioner's request for continued BadgerCare Plus benefits as of February 1, 2013 because petitioner was unable to establish any non-financial eligibility as of February 1, 2013.

THEREFORE, it is

ORDERED

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 8th day of May, 2013

\sGary M. Wolkstein
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 May 8, 2013.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability
kln@legalaction.org