



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/147817

PRELIMINARY RECITALS

Pursuant to a petition filed March 04, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on April 02, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner's application for BadgerCare+ (BC+) was correctly denied because he does not have his children 40% of the time.

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: Kathy Christman

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. Petitioner applied for BC+ on or about October 24, 2012.
3. After submissions to the agency as to placement, monthly visitation and vacation placement, the agency concluded that Petitioner does not have placement of his children 40% of the time. His application was, therefore, denied.

- 4. The agency determined that Petitioner has his children as follows:
 - Tuesdays - 4.5 hours x 4.3 wks. per month = 19.35 hrs./mo.,
 - Thursdays -16.5 hours x 4.3 wks. per month = 70.95 hrs./mo.,
 - Every other weekend - 64.5 x 2.15 wkends/month = 138.68 hrs./mo. and
 - 21 days for vacation - 24 hours per day/12 months = 42 hrs. /mo.
- 5. The hours noted at finding number for equal 270.98 hours per month. Total hours in a month are 722.4 hours (24 x 7 x 4.3). Thus Petitioner has placement of his children 37.5% of the time.

DISCUSSION

The following provision from the BadgerCare+ Eligibility Handbook (BEH) is relevant to the issue of BC+ eligibility for parent with less than full or 50% custody of children:

2.2.1.2 Joint Placement

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.

...
BEH, §2.2.1.2.

Petitioner argues that during the course of the year he has his children 52 Tuesdays, 52 Thursdays, 21 days for summer vacation and 48 weekend days for a total of 173 days or 475 of the year. He argues that this is how child support makes its determinations.

I do not subscribe to Petitioner’s theory. The BC+ program is not part of child-support or governed by its rules or policy. Rather, the BC+ program has its own rules and policies. The provision noted above clearly indicates that reasonably equivalent placement means 40% of the time during the month. It does not say ‘days’ during the month. I conclude, therefore, that the agency correctly denied Petitioner’s application for BC+ benefits as he does not have his children 40% of the time during the month.

CONCLUSIONS OF LAW

That the agency correctly denied Petitioner’s application for BC+ benefits as he does not have placement of his children 40% of the time during the month.

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 Milwaukee,
Wisconsin, this 14th day of May, 2013

\sDavid D. Fleming
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 14, 2013.

Racine County Department of Human Services
Division of Health Care Access and Accountability