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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/148491

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 04, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on May 06, 2013, at Neillsville, Wisconsin. The record was held open for ten (10) days to allow petitioner to supply additional documentation. That documentation was timely received and marked as Exhibit 5.

The issue for determination is whether the respondent correctly determined that petitioner's minor daughters do not reside with petitioner at least 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: Tom Miller

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Clark County.

2. The petitioner has an ongoing MA/BadgerCare Plus (BCP) case. She has joint custody of her minor daughters with her ex-husband. The ex-husband is not on public assistance, and the minor daughters are covered under health insurance offered by the ex-husband's employer. Petitioner pays child support to fund the daughters' coverage.
3. On March 29, 2013, the Department issued written notice to the petitioner advising that her BCP would be discontinued effective May 1, 2013, due to failure to verify that her minor children resided in the home.
4. The petitioner submitted a transcript of a Decision of the Outagamie County Circuit Court dated April 12, 2011, which provides for primary placement of their daughters with petitioner's ex-husband during the school year, and primary placement with petitioner during the summer. Exhibit 5.

### 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. In general, to be eligible for any BCP plan, a family cannot have income greater than 200% of the poverty line. Wis. Stats. §49.471(8). The poverty line benchmarks may be viewed at *BCPEH* at §50.1, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

In the instant case, the agency determined that the petitioner was not eligible for BadgerCare Plus for a *non*financial reason. To qualify for BCP, the statute requires that an adult must be the parent of a child who is residing in the adult's home, or be working toward family unification by complying with a permanency plan:

(4) GENERAL ELIGIBILITY CRITERIA ... (a) ... all of the following individuals are eligible for the benefits ...:

1. A pregnant woman...
2. A child who is under one year of age...
3. A child whose family income does not exceed 200 percent of the poverty line ...
4. An individual who satisfies all of the following criteria:
  - a. *The individual is a parent* or caretaker relative *of a child who living in the home with the parent* or caretaker relative or who 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 or 938.38. ...

*(emphasis added)*

Wis. Stat. §49.471(4)(a). The statute does not provide further direction as to how much time a child needs to be placed in a parent's home to be "living in the home" with the parent.

The Department's policy handbook contains the following elaboration:

#### **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.

...

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.
  2. A qualified relative caretaker relative residing with a child in the home who is under age 19, or residing with a spouse who is a qualified relative caretaker relative  of a child in the home who is under age 19. (caretaker relative)
  3. A pregnant woman, or the spouse of a pregnant woman,
  4. A Youth under age 21 who was in out-of-home care (e.g., foster care) at age 18, or
  5. A child.
- ...

### 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.

If only one parent of a child is applying for BC+ and he or she is stating that they have placement of the child for at least 40% of the time, accept the declaration unless it is questionable. .... [emphasis added]

*BCPEH*, §§2.2.1. The agency has looked at her placement time on a month to month basis. In general, MA and BCP nonfinancial eligibility is looked at on a month to month basis, and the policy language at §2.2.1.2 above is consistent with that view. Placement of 40% would equate to 146 days per year.

The petitioner argues that, if her time with her children is viewed over the course of any entire year, her *average* monthly time exceeds 40% per month. I am unable to arrive at the same conclusion. I have reviewed Exhibit 5, and it comports with petitioner's testimony that during the school year, petitioner has placement of the children two weekends to every one weekend that they spend with their father. During the school year, they reside with their father during the week. Petitioner testified that she also has placement on school holidays and days off of school.

The language in Exhibit 5 seems to indicate an opposite schedule for the summer (i.e., petitioner has placement of the children weekly, as well as one weekend to every two weekends that they spend with their father). Petitioner, however, indicates at Exhibit 3 that, "The summer [schedule] is I have the children 2 full weeks to his [ex-husband's] one week." Exhibit 3, p. 1.

There are approximately 13 weeks each summer. Assuming that petitioner's reference in Exhibit 3 is correct,<sup>1</sup> she would have placement of the children for 9 weeks, and her ex-husband would have placement for 4 weeks. That would equate to 63 days of placement each summer. During the school year, petitioner has placement of the children for approximately 27 weekends. Assuming a two-day weekend, that results in 54 days. Petitioner also testified that she has custody during all school breaks. Based upon the school calendar included with Exhibit 5, I counted 18 days where school is closed.

As such, it appears that the petitioner has placement of her minor children 135 days each year (63+54+18). Petitioner noted in her Request for hearing that she has placement of her daughters 173 days each year; she failed to establish this at hearing. 135 days equals approximately 37% annual placement. Therefore, the Department's decision to discontinue the petitioner's BCP effective May 1, 2013, was correct.

### **CONCLUSIONS OF LAW**

The county agency correctly discontinued the petitioner's BCP effective May 1, 2013, because petitioner does not have placement of her minor children at least 40% of the time.

**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**

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<sup>1</sup> Calculating days of placement where summers are treated as the school year (i.e., petitioner has placement of the children weekly, as well as one weekend to every two weekends that they spend with their father) would increase her placement days annually to 155, or 42.4%. However, when weighing the vague language of the Decision (Exhibit 5) and the specific language of petitioner's Exhibit 3, I conclude that Exhibit 3 more correctly describes summer placement of the minor children.

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 30th day of May, 2013

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\sPeter McCombs  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 30, 2013.

La Crosse County Department of Human Services  
Division of Health Care Access and Accountability