



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/148717

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Chippewa County Department of Human Services in regard to Medical Assistance, a hearing was held on May 21, 2013, at Chippewa Falls, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner is ineligible for BadgerCare Plus because he does not have a child that lives with him 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: Rhonda Kimmer

Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. The county agency notified the petitioner on February 28, 2013, that he was ineligible for BadgerCare Plus because he does not have a child living with him.

3. The petitioner's son does not live with him.

DISCUSSION

BadgerCare Plus provides medical assistance coverage to children under 19 and their parents or caretakers. Wis. Stat. § 49.471; *BadgerCare Plus Eligibility Handbook*, § 2.1. A parent must reside with a child under 19 to be eligible. Wis. Stat. § 49.471(4)(a)4.a. *BadgerCare Plus Handbook*, § 2.2. The following policy guides eligibility in situations in which parents have joint custody:

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.

BadgerCare Plus Eligibility Handbook, § 2.2.1.2.

The county agency denied the petitioner's request for BadgerCare Plus because it determined that his son lived with the child's mother and not him. The petitioner indicated in his request for an appeal that he had the child full time, but at the hearing, he testified that had the child every other week, which raises questions about his credibility. Those questions are increased because he was convicted of a crime in Eau Claire county circuit court on January 24, 2013. (Wisconsin law allows criminal convictions to be considered when judging credibility. Wis. Stat. § 906.09.) In addition, the agency worker pointed out that the petitioner lives in [REDACTED], but his son attends daycare in [REDACTED], the home of the child's mother. The petitioner has the burden of proving by the preponderance of the evidence that the child lived with him. Given the lack of any evidence supporting his claim other than his dubious testimony, he has not met this burden. He may have been able to do so with a court order showing that his child has been placed primarily with him, but, as he admits, there is no such court order. Because he does not have a child living with him, the agency correctly determined that he is ineligible for BadgerCare Plus.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner is ineligible for FoodShare because his son does not live with him.

THEREFORE, it is

ORDERED

The petitioner's 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 Madison,
Wisconsin, this 3rd day of June, 2013

\sMichael D. O'Brien
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 June 3, 2013.

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