



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/148835

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 17, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Washburn County Department of Social Services in regard to Medical Assistance, a hearing was held on May 22, 2013, at Shell Lake, Wisconsin.

The issue for determination is whether the petitioner may receive BadgerCare Plus if she cares for a 17-year-old child who is not related to her.

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: No Appearance

Washburn County Department of Social Services  
110 W 4th Avenue  
PO Box 250  
Shell Lake, WI 54871

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Washburn County.

2. For the last two years, the petitioner has cared for a child who is now 17 years old. That child is not related to her by blood, marriage, or adoption. The child's mother signed a paper that stated the following:  

I [mother's name] relinquish my parental rights of my daughter [child's name] to [petitioner] & give her all rights and responsibilities to care for [child's name and date of birth].
3. The petitioner does not live with and care for any relatives under 19 years old.
4. The county agency notified the petitioner that her BadgerCare Plus would end as of May 1, 2013, because she no longer had a qualifying relationship with a child under 19 years old.

### **DISCUSSION**

BadgerCare Plus provides medical assistance to children under 19, their parents or other caretaker relatives who live with them, and pregnant women. Wis. Stat. § 49.471(4). "Caretaker relative is defined in Wis. Stat. § 49.471(b) as

an individual who is maintaining a residence as a child's home, who exercises primary responsibility for the child's care and control, including making plans for the child, and who is any of the following with respect to the child:

1. A blood relative, including those of half-blood, and including first cousins, nephews, nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.
2. A stepfather, stepmother, stepbrother, or stepsister.
3. An individual who is the adoptive parent of the child's parent, a natural or legally adopted child of such individual, or a relative of an adoptive parent.
4. A spouse of any individual named in this paragraph even if the marriage is terminated by death or divorce.

The county agency seeks to end the petitioner's BadgerCare Plus benefits because none of her children are under 19 years old. She has cared for an acquaintance's now 17-year-old child for the last two years. Her authority for doing so rests solely with the following statement signed by the child's mother: "I [mother's name] relinquish my parental rights of my daughter [child's name] to [petitioner] & give her all rights and responsibilities to care for [child's name and date of birth]." I understand why the petitioner believes she should be entitled to BadgerCare Plus. Without receiving any compensation, she has taken a child whose parents are a drug addict and a convicted prisoner and transformed that child from one who received Ds and Fs in school to one who is now on the honor roll. Nevertheless, the petitioner is not related by blood, marriage, or adoption to the child. This means that the petitioner cannot be considered a caretaker to the child for BadgerCare Plus purposes even though she is clearly providing the same services as one who meets the definition. As a result, I must find that she is no longer eligible for BadgerCare Plus.

I note to the petitioner that the signed statement from the child's mother has little if any legal effect. Only a court can terminate parental rights. Although I understand that she has little money, I suggest she see a lawyer for advice. She may be eligible for services from Wisconsin Judicare, which provides low-cost or free legal services. Its telephone number is (800) 472-1638 and its email address is [info@judicare.org](mailto:info@judicare.org).

### **CONCLUSIONS OF LAW**

The county agency correctly seeks to end the petitioner's eligibility for BadgerCare Plus because she is no longer caring for a child under 19 who is related to her.

**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 1st day of July, 2013

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\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 July 1, 2013.

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