



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/148966

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 25, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on May 21, 2013, at Milwaukee, Wisconsin.

This petitioner filed an appeal of this same issue on January 23, 2013. The matter was resolved by stipulation, whereby the respondent agreed to add petitioner’s daughter, J.R., to his assistance group.

The issue for determination is whether respondent correctly determined that petitioner’s daughter is not part of petitioner’s assistance group.

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: Paul Frederickson  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. On or about April 19, 2013, petitioner's minor daughter, J.R., provided an email to the agency indicating that she resides with her aunt.
3. On April 22, 2013, the agency issued a notice of decision to petitioner stating that effective June 1, 2013, he would only be eligible for healthcare benefits if he met a deductible of \$1,567.98.
4. J.R. has not resided with her father consistently, and has reportedly been living with her aunt. He considers her a runaway. He provided court documents showing that as of February 20, 2013, the Milwaukee County Circuit Court had denied a petition by the aunt seeking guardianship as he was available to J.R. as her parent.
5. Petitioner reported J.R. missing when she left his home on March 8, 2013.
6. J.R. stayed with petitioner for approximately one week in April, 2013. J.R. last stayed at petitioner's home in late April/early May of 2013.

### DISCUSSION

BadgerCare+ is an expansion of the Wisconsin MA program designed to provide coverage to children under age 19 and their parents. Wis. Adm. Code, §DHS 103.03(1)(f). To be eligible for BadgerCare+, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Adm. Code, §DHS 103.03(1)(f)1. Parents in a BadgerCare+ household are eligible only if the total household income is no greater than 200% of the federal poverty level (FPL). There is no income limit for BadgerCare+ eligibility for children but there may be a premium for them.

Respondent argues that, under BC+ policy entitled "Joint Custody", a parent must have 40% placement to be eligible for BC+ as a caretaker. The instant situation does not specifically involve a determination of custody between two parents, though I note that the policy also instructs that, if only one parent of a child applies for BC+ and he or she is stating that they have placement of the child for at least 40% of the time, respondent is to accept the declaration unless it is questionable. *BadgerCare Plus Eligibility Handbook* (BCPEH) § 2.2.1.2.

Despite the present issue having been the subject of a stipulation of the parties in March of 2013,<sup>1</sup> the respondent argues that the issue of J.R.'s residence became questionable when J.R. submitted an email indicating that she was not residing with petitioner. The respondent subsequently issued its negative notice to petitioner only three days after the email from J.R. indicating that J.R. was no longer considered part of his assistance group.

The volatile nature of petitioner's relationship with his daughter is well known to the respondent. Even the limited record before me demonstrates that J.R. has been in and out of petitioner's home several times in the past year.

BC+ policy addresses temporary absences thusly:

#### **2.3.2 Temporary Absence**

A child and that child's parent or caretaker relative can be in the same BC+ Test Group even when not living together if either is temporarily absent, provided:

1. The continuous absence is expected to be for no more than six months.

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<sup>1</sup> See, *DHA Decision* BCS/146812, March 11, 2013.

The IM agency may approve an extension of a child's temporary absence beyond six months when the caretaker relatives meet the Child Welfare Caretakers requirements **and**

- 2. The caretaker relative continues to exercise responsibility for the care and control of the child.

Children who are inmates of public institutions (3.6) are not temporarily absent. Children who are placed in an institution for 30 or more days are not temporarily absent, unless they were placed there by a child welfare agency.

Children who are placed in an IMD are not temporarily absent, unless they were placed there by a child welfare agency.

BCPEH § 2.3.2.

I find nothing in the record to counter an argument that respondent’s actions concerning petitioner’s MA benefits were conducted without application of BC+ policy concerning temporary absences. Specifically, there is no indication that J.R. will be absent for more than 6 months. Nor is there evidence that petitioner has abdicated his responsibility for the care and control of J.R. To the contrary, petitioner has consistently sought to assert said responsibility. As such, I will remand this matter to the respondent to return J.R. to petitioner’s assistance group, as respondent has not demonstrated that J.R. is not “temporarily absent” pursuant to BC+ policy. While respondent may, in the future, determine that J.R. does not qualify as temporarily absent, at the present time she does.

**CONCLUSIONS OF LAW**

The Department erred in determining that petitioner’s daughter is not part of petitioner’s assistance group.

**THEREFORE, it is ORDERED**

That the matter is remanded to the agency with instructions to take the administrative steps necessary to redetermine petitioner’s BC+ effective June 1, 2013, by adding J.R. back on his case, and issue a notice of decision regarding that action. This action shall be completed within 10 days of the date of this Decision.

**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 28th day of June, 2013

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\sPeter McCombs  
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 28, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability