



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/149026

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Shawano County Department of Social Services ["BCS"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on June 18, 2013.

The issue for determination is whether it was correct to discontinue petitioner's BadgerCare plus Medical Assistance ["BC+"] effective April 1, 2013.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Sarah Bartz, ES Supervisor
Shawano County Department of Social Services
607 E. Elizabeth Street
Shawano, WI 54166-3105

OTHER PERSON PRESENT:

[Redacted], petitioner's daughter

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]; 49 years old) is a resident of Shawano County.

2. The County discontinued BC+ for petitioner effective April 1, 2013.
3. Petitioner provides most of the care and support for her 2 year old granddaughter whose initials are ARL.
4. In March 2013 petitioner's daughter ["JSL"] moved back into petitioner's household; JSL is the mother of ARL.
4. Petitioner is not any of the following: pregnant; the parent/caretaker of a child(ren) under 19 years of age; a young adult exiting out of home care (such as foster care); or, a parent/caretaker relative whose child(ren) have been removed from the home and placed in out of home care.

DISCUSSION

In order to be eligible for BC+ a person, such as petitioner, who is 19 years of age or older must be 1 of the following: pregnant; the parent/caretaker¹ of a child(ren) under 19 years of age; a young adult exiting out of home care (such as foster care); or, a parent/caretaker relative whose child(ren) have been removed from the home and placed in out of home care. Wis. Stat. § 49.471(4) (2011-12); Wis. Admin. Code § DHS 103.03(1)(f)1. (December 2008); *BadgerCare + Eligibility Handbook* ["BC+ Handbook"] 1.1 & 2.1. Petitioner is any of these things and does not claim to be. Therefore, it was correct to discontinue BC+ effective May 1, 2013.

It is true that petitioner provides most of the care and support for her 2 year old granddaughter (ARL). However, in cases where a child resides with both a caretaker relative and a parent, the parent is considered the caretaker relative (unless legal custody has been given by a court to the caretaker relative)². BC+ Handbook 2.2.1. Thus, in this case JSL must be considered the caretaker relative even though petitioner provides most of the care and support for ARL.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to discontinue petitioner's BC+ effective April 1, 2013.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

¹ A *caretaker relative* means an individual who, among other things, is maintaining a residence as a child's home and who exercises primary responsibility for the child's care and control including making plans for the child. Wis. Stat. § 49.471(1)(b) (2011-12). However, a parent residing with his or her child under the age of 19 must be in the same BC+ Test Group. This is true even when the legal custody of the child has been transferred to someone living outside of the home (the only exception is when someone's parental rights have been legally terminated; there is no evidence in the record of this matter that JSL's parental rights have been legally terminated.). Further, a child under age 19 residing with a parent may not apply separately from his or her parent. In addition, the parent must apply as the primary person for the case (unless the child filing the application is age 18). BC+ Handbook 2.2.1.

² There is no evidence in the record of this matter that custody of ARL has been given by a court to petitioner.

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 24th day of June, 2013

\sSean P. Maloney
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 24, 2013.

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