



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/149239

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a telephone hearing was scheduled for June 18, 2013. Following petitioner's subsequent requests to reschedule later proceedings, a telephone hearing was ultimately held on August 12, 2013, at Janesville, Wisconsin.

The issue for determination is whether petitioner and/or her minor child are eligible for medical assistance (MA) benefits.

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

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner and her minor child received medical assistance (MA) through Wisconsin's BadgerCare program. In April or May of 2013, petitioner paid a premium payment to respondent. Petitioner's (MA) benefits terminated in April or May of 2013.
3. Petitioner timely appealed the termination of her MA benefits on May 6, 2013.

DISCUSSION

Respondent failed to appear at the August 12, 2013, hearing in this matter, even though it was given proper notice. Documentary evidence was provided by the respondent prior to hearing, but as the respondent did not appear, none of the documents could be verified by respondent's representative, nor vetted by the petitioner. There is no verified evidence in the record of this matter to support the respondent's presumed termination of petitioner's BadgerCare enrollment due to income exceeding program limits. There is no evidence that the respondent accurately calculated petitioner's income. Petitioner appeared at the August 12, 2013, hearing and presented credible testimony that she properly reported her income as requested by petitioner. Petitioner expressed confusion regarding a premium payment that was paid shortly before benefits were terminated.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to end the petitioner's BadgerCare benefits, the respondent is the moving party. The respondent acknowledged the principle laid down in *Hanson* in *Final Decision ATI-40/87198* where Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case. The respondent has failed to do this. Consequently, the question of the eligibility of petitioner and/or petitioner's minor child must be remanded for further review by the respondent.

CONCLUSIONS OF LAW

The agency has not established that the petitioner and/or her minor child are not eligible for medical assistance (MA) benefits.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent with instructions that it review and re-determine the MA eligibility of petitioner and petitioner's minor child. Additionally, the respondent shall review any premium payments made by petitioner in 2012 and 2013. If it is determined that petitioner has paid a premium in error, said payment shall be refunded to petitioner. The respondent shall notify petitioner in writing of the results of its review and re-determination with regard to eligibility as well as the question of any premium payments, and of petitioner's subsequent appeal rights. All actions required by this Order shall be completed within 10 days following issuance 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 August, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 28, 2013.

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