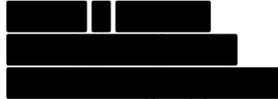




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/149931

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Department of Health Services by [REDACTED] Enrollment Services, in regards to the discontinuance of Medical Assistance BadgerCare Plus, a telephone hearing was held on July 18, 2013, at [REDACTED], Wisconsin. At the request of both parties, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the county agency correctly discontinued the petitioner's BadgerCare Plus certification because he is not the caretaker of minors.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lee Yang

[REDACTED] Enrollment Services
1220 W Vliet St
[REDACTED], WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED] County. He applied for BC+ coverage on March 18, 2013, stating that his two minor children with [REDACTED] [REDACTED], i.e., [REDACTED] and [REDACTED], resided with him.
2. The Department opened the petitioner's case and certified the household for BC+.

3. Subsequently, the agency received information indicating that the two minors were living with [REDACTED], and not with [REDACTED], and requested he verify their residence address.
4. The petitioner provided only a copy of a school emergency contact card showing his residence address as the contact address for [REDACTED] and [REDACTED]. The agency deemed this insufficient and acted to close the petitioner's case on June 6, 2013.
5. On June 11, 2013, the petitioner came to the agency and alleged that [REDACTED] [REDACTED] was committing welfare fraud because she was receiving public assistance benefits for the two children
6. [REDACTED] and [REDACTED] do not reside with the petitioner 40%, or more, of the time.

DISCUSSION

The petitioner began receiving BC+ because he reported at application that he was a parent caretaker of two minor children. *BC+ Eligibility Handbook*, §2.1. After application, the actual living arrangements of the petitioner's household became questionable, and it requested that the petitioner verify that his two children were living with him. If a parent caretaker shares joint custody and has the child or children living with him at least 40% of the time, he can be eligible for BC+. *BC+ Eligibility Handbook*, §2.2.1.2.

In reply to the verification request, the petitioner produced only a school system emergency card listing his address as the address of the two children, and nothing else. At the hearing, he admitted that he pays child support to [REDACTED] for these same two children; that [REDACTED] has legal custody; and [REDACTED] has primary placement under a court order. He stated in his appeal letter that [REDACTED] gets FS and MA claiming these two children in her household. Still, he asserts that these children actually live with him, and [REDACTED] spends the child support on herself. However, he could produce no other document or witness to corroborate the claim. He averred that this proof is difficult. In my 23 years' experience as an administrative law judge, I can say without a doubt that it should not be so difficult. Witnesses, like Ms. [REDACTED], or Ms. [REDACTED], neighbors, family members, friends, medical records, church records, court records, child support records, government records, Social Security cards and information; any selection of a small number of mutually corroborative types of evidence can establish where a child lives. Rather, when a child does *not* live in an asserted home, *it is conversely very difficult to establish that he or she does.*

The preponderance of the evidence in this record supports the conclusion that the agency correctly determined that the petitioner has not demonstrated that these two minor children are living with him at least 40% of the time. Such a claimant must produce more than the mere assertion that this is so. Here, this petitioner has essentially made the assertion, plus one document, the school emergency card, indicating that the children live with him. In addition, he has also not been a very credible witness. I note, for example, that when the agency determined at one point in this process that he was living with [REDACTED] [REDACTED] and her two children, that [REDACTED] immediately provided an Affidavit of Non-Residence stating that he did not. However, the agency also possessed two rent receipts for [REDACTED] showing that [REDACTED] and the petitioner paid \$865 in June, and again in July, 2013, as rent for the petitioner's residence address of [REDACTED], [REDACTED]. See, Exhibit #2, attached receipts. I find the petitioner's testimony in general to be self-serving, evasive, highly convenient, uncorroborated by significant or reliable other evidence (except the emergency card, which is of limited value to actually prove residence), contradicted by the rent receipts for the past two months showing that he was sharing rental costs with [REDACTED], and generally not credible. The agency determination must be sustained on these facts.

CONCLUSIONS OF LAW

That the Department has correctly discontinued the petitioner's BC+ effective July 1, 2013, because he was not the caretaker of his two minor children-in-common with [REDACTED] [REDACTED].

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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 22nd day of July, 2013

\sKenneth D. Duren, Assistant Administrator
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 22, 2013.

██████████ Enrollment Services
Division of Health Care Access and Accountability