



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/150206

PRELIMINARY RECITALS

Pursuant to a petition filed June 21, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on July 24, 2013, by telephone.

The issue for determination is whether the Department correctly discontinued the petitioner's MA/BCP effective July 1, 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lee Yang, HSPC
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner has an ongoing MA/BadgerCare Plus (BCP) case. In the past, she had joint custody of her minor children with their father.

3. The petitioner applied for FS in May 2013. During that application process, the petitioner revealed that the children were placed with their father, and that she only had court-ordered visitation on weekends (Saturday morning into Sunday). On May 28, 2013, the Department issued written notice to the petitioner advising that her BCP would be discontinued effective July 1, 2013, due to lack of a minor child living in the home. The petitioner timely appealed, and aid was ordered continued pending appeal.
4. The best evidence in the hearing record is that the petitioner does not have custody or placement of her children, and that they appear for court-ordered visitation on weekends. The children are not present in the petitioner's home for at least 40% of their time.
5. The Department has concluded that the petitioner does not meet the nonfinancial test of having a minor child residing in her household for BCP purposes.

DISCUSSION

BadgerCare Plus is an expansion of the Wisconsin Medical Assistance program meant to provide insurance for children under 19 and their parents. *BadgerCare Plus Eligibility Handbook (BCPEH)*, 1.1. There are two major BCP benefit plans. In general, to be eligible for any BCP plan, a family cannot have income greater than 200% of the poverty line. Wis. Stats. §49.471(8). The poverty line benchmarks may be viewed at *BCPEH* at §50.1, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

In the instant case, the agency determined that the petitioner was not eligible for BadgerCare Plus for a *nonfinancial* reason. To qualify for BCP, the statute requires that an adult must have be the parent of a child who is residing in the adult's home, or be working toward family unification by complying with a permanency plan:

(4) GENERAL ELIGIBILITY CRITERIA ... (a) ... all of the following individuals are eligible for the benefits ...:

1. A pregnant woman...
2. A child who is under one year of age...
3. A child whose family income does not exceed 200 percent of the poverty line ...
4. An individual who satisfies all of the following criteria:
 - a. *The individual is a parent* or caretaker relative *of a child who living in the home with the parent* or caretaker relative or who temporarily absent from the home for not more than 6 months or, if the child has been removed from the home for more than 6 months, the parent or caretaker relative is working toward unifying the family by complying with a permanency plan under s.48.38 or 938.38. ...

(emphasis added)

Wis. Stat. §49.471(4)(a). The statute does not provide further direction as to how much time a child needs to be placed in a parent's home to be "living in the home" with the parent.

The Department's policy handbook contains the following elaboration:

2.2 BC+ TEST GROUP

The **BC+ Test Group** includes the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. Inclusion in the Test Group is determined by qualifying relationships and legal responsibility.

...

The primary person who applies for BC+ must meet one of the following requirements in order to form a BC+ Test Group. The primary person must either be:

1. A parent residing with his or her child under age 19 or residing with a spouse and his or her child who is under age 19.
2. A qualified relative caretaker relative residing with a child in the home who is under age 19, or residing with a spouse who is a qualified relative **caretaker relative** of a child in the home who is under age 19. (caretaker relative)
3. A pregnant woman, or the spouse of a pregnant woman,
4. A Youth under age 21 who was in out-of-home care (e.g., foster care) at age 18, or
5. A child.

...

2.2.1.2 Joint Placement

*When the natural or adoptive parents of a child do not live together, and have joint placement arrangements for the child (through a mutually agreed upon arrangement or court order), only one parent can be determined eligible at a time unless there is reasonably equivalent placement. Reasonably equivalent placement means that the child is residing with each parent at least **40% of the time during a month.***

If the child is not residing with both parents at least 40% of the time, only the parent with the greater percentage of the placement time may apply on behalf of the child and/or for him or herself as the caretaker relative of that child.

If only one parent of a child is applying for BC+ and he or she is stating that they have placement of the child for at least 40% of the time, accept the declaration unless it is questionable.

.... [emphasis added]

BCPEH, §§2.2.1. The petitioner admits that her children are not with her for 40% of their time per month (2 weekend days is no more than 29% out of a week). Her sole argument is that she needs health insurance. Therefore, the Department's decision to discontinue the petitioner's BCP for July, 2013, was correct.

The Department's hearing representative agreed to send the petitioner a Presumptive Disability MA application, as she testified to being quite ill, with a regular MA disability application pending before the Disability Determination Bureau. The petitioner should take the Presumptive Disability application to one of her doctors, for his/her completion, and then appropriately file that document.

If the petitioner is not found to be disabled, she may wish to reapply for BadgerCare Plus after January 1, 2014. At that time, it is expected that state law will change, and that a person with income under 100% of the federal poverty level will receive BadgerCare Plus, without having to prove that she is disabled.

CONCLUSIONS OF LAW

1. The county agency correctly discontinued the petitioner's BCP for July, 2013, because there is no minor child living in the petitioner's home.

THEREFORE, it is

ORDERED

That the petition 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 26th day of July, 2013

\sNancy J. Gagnon
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 26, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability