



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/150527

PRELIMINARY RECITALS

Pursuant to a petition filed July 05, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Langlade County Department of Social Services in regard to Medical Assistance, a hearing was held on September 24, 2013.

The issue for determination is whether the county agency correctly discontinued the petitioner's BadgerCare Plus (BCP) Medical Assistance (MA) for lack of cooperation with the child support agency.

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: Rhonda Strandberg
Langlade County Department of Social Services
1225 Langlade Road
Antigo, WI 54409-2795

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Langlade County.
2. On or about June 18, 2013, petitioner submitted a Good Cause Claim form, which included a hand-written explanation for petitioner's inability to cooperate with the Child Support Agency (CSA).

3. Petitioner alleged ‘good cause’ based upon potential harm to petitioner and/or her child.
4. On June 26, 2013, the respondent denied the Good Cause Claim due to lack of supporting documentation, lack of a notarized signature, and lack of contact information for witnesses.
5. The petitioner asserts that the father of her child physically and mentally abused her, and that he has threatened her life. She testified that she has no documentation or other supporting evidence of her assertions.

DISCUSSION

As a nonfinancial condition of MA eligibility, a mother must cooperate with the CSA in establishing the paternity of her children who receive MA. If she does not cooperate, that parent can lose her MA. Wis. Stat. §49.45(19); *BadgerCare + Eligibility Handbook (Handbook)*, §5.2 (2-1-08). The *Handbook* is viewable online at <http://www.emhandbooks.wi.gov/bcplus>. Although the CSA makes the determination of non-cooperation, the parent may appeal the determination in a fair hearing. She can regain eligibility by cooperating with the CSA. *Id.*, 5.3.5, and 5.3.9 - .10.

MA support liability is assigned to the state just as it is under the Wisconsin Works (W-2) program. Wis. Admin. Code §HFS 103.03(5). Standards for cooperation with medical support are found at Wis. Admin. Code §DCF 102.05. Under that section, a parent must cooperate in determining the paternity of a minor child. Cooperation includes providing information known to or reasonably obtainable by the person, and attending office appointments and hearings. *Id.*,(b); see also *Handbook*, §5.2.

Per the *Handbook*, §5.3.4, the county agency is required to determine whether or not cooperation is against the best interests of the child. Cooperation is waived only if:

1. The parent or caretaker’s cooperation is reasonably anticipated to result in physical or emotional harm to the:
 - a. **Child.** This means that the child is so emotionally impaired, that his or her normal functioning is substantially affected, or
 - b. **Parent or Caretaker.** This means the impairment is of such a nature or degree that it reduces that person's capacity to adequately care for the child, or
2. At least one of the following circumstances exists and it is reasonably anticipated that proceeding to establish paternity or secure support or both would be detrimental to the child:
 - a. The child was conceived as a result of incest or sexual assault, or
 - b. A petition for the child's adoption has been filed with a court, or
 - c. The parent or caretaker is being assisted by a public or private social agency in deciding whether or not to terminate parental rights and this has not gone on for more than three months.

The parent must request good cause and prove why cooperation is not in the best interests of the child. The non-cooperation good cause criteria in the administrative code read as follows:

Good cause criteria. A custodial or noncustodial parent is eligible for an exemption from the cooperation requirements in s. DCF 102.03 when the W-2 agency determines that any of the following criteria applies:

- (1) Cooperation is reasonably anticipated to result in either physical or emotional harm to the child, including threats of domestic abuse or child kidnapping.
- (2) Cooperation is reasonably anticipated to result in either physical or emotional harm to the parent, including domestic abuse.
- (3) Cooperating with the child support agency would make it more difficult for the individual to escape domestic abuse or unfairly penalize the individual who is or has been victimized by such abuse, or the individual who is at risk of further domestic abuse.
- (4) The child was conceived as a result of incest or sexual assault.
- (5) The parent is considering whether to terminate parental rights and sought the assistance of a public or licensed private social services agency not more than 3 months ago.
- (6) A petition for the adoption of the child has been filed with a court, except this does not apply as a good cause exemption from the responsibility to make payments under an existing court order.

See Wis. Admin. Code § DCF 102.05. The criteria in the *BadgerCare + Eligibility Handbook*, §5.3.5, is more detailed:

The following may be used as evidence:

1. Birth certificates or medical or law enforcement records that indicate that the child may have been conceived as a result of incest or sexual assault.
2. Court documents or other records which indicate that a petition for the adoption of the child has been filed with a court.
3. Court, medical, criminal, child protective services, social services, psychological school, or law enforcement records which indicate that the alleged father or absent parent might inflict physical or emotional harm on the member or the child.
4. Medical records which give the emotional health history and present emotional health status of the member or the child.
5. A written statement from a mental health professional indicating a diagnosis of or prognosis on the emotional health of the member or the child.
6. A written statement from a public or private social agency that the agency is assisting the parent to decide whether or not to terminate parental rights.
7. A sworn statement from someone other than the member with knowledge of the circumstance on which the claim is based.
8. Any other supporting or corroborative evidence.

There is no dispute that the petitioner has declined to name the father of her child. I concur with the agency's judgment that she has not established that good cause exists to exempt her from cooperation. By not providing a name, there is no way to verify her testimony about the character of the man and the circumstances surrounding the conception of the child. There is no way to check if a criminal record or abuse and neglect registry exists. The petitioner testified that she has never told the man of the birth of the child. Thus, she does not live with the father, so current domestic abuse is not a concern. Understandably, proceedings to terminate parental rights have not commenced. However, the father does not get a pass on contributing to the cost of raising his child. If the facts change in the future or the petitioner finds supporting evidence, she may again assert a good cause claim at that time. In the meantime, failure to proffer the necessary testimony to establish paternity constitutes noncooperation. Therefore, the sanction imposition was appropriate.

The petitioner, and to a certain extent the respondent, have argued that the program standard is unfair and that the administrative law judge should grant petitioner relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she has not established good cause for her failure to cooperate with the CSA; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

1. The petitioner failed to cooperate with the CSA by failing to assist in the pursuit of child support from the named father.
2. The county agency correctly imposed a sanction on the petitioner's MA certification due to her lack of cooperation with the CSA.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 1st day of November, 2013

\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 November 1, 2013.

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