FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

BCS/150586

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 2013, under Wis. Stat., §49.45(5)(a), to review a decision by Brown County Human Services to discontinue Medical Assistance (MA), a hearing was held on September 19, 2013, by telephone. A hearing set for August 22, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether the father of petitioner's child lives with her.

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Crystal Glen
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Brown County.
2. Until the county action petitioner received BadgerCare Plus (BC+) MA for herself and two children. The county investigated whether R.W., the father of the youngest child, lived in petitioner's home. After the investigation the county concluded that R.W. lived with petitioner.
3. The county then asked petitioner to verify R.W.'s income. Petitioner did not do so, insisting that he does not live with her. Then, by a notice dated July 5, 2013, the county informed petitioner that BC+ would end August 1 because she did not verify household information.

4. R.W. spends substantial time with petitioner. However, he has his own apartment for which he pays $435 per month. He pays child support through the court system for the child.

DISCUSSION

Under BC+ anyone in the home who meets the criteria of being in the BC Plus test group is always included in the group whether or not he or she requested BC Plus. BC Plus Handbook, Appendix 2.2. A co-parent is always part of the BC Plus group under this policy, even if there are other children in the household who are not his. Handbook, App. 2.2.1. This policy mirrors the Wisconsin Administrative Code definition of "fiscal test group" found at Wis. Adm. Code, §DHS 101.03(65).

The issue in this case is whether R.W. is in petitioner's home sufficiently to conclude that he is part of the household. I conclude from the evidence that he is not, and thus the county should not have added him to petitioner's BC+ case.

There are two major pieces of evidence supporting this conclusion. R.W. has a distinct separate residence for which he pays monthly rent, and he is ordered to pay child support for the child, an order that would not exist if the parents told the paternity court that they lived together. In addition, the investigation found that in 2013, prior to his renting out the current apartment, R.W. told police on two different occasions that he lived on 9th Street, an address different than petitioner's residence. Finally, as noted in the investigation report, when R.W. rented his apartment, he initially was going to rent a smaller unit, but then changed to a larger one because he was getting custody of his teenage son. That does not strike me as something a person would do if he intended to use the apartment as a ruse to get his girlfriend higher welfare benefits.

In her investigation Sgt. Jossart spoke with a number of people including R.W.'s son, with whom he had recently had an altercation, the landlords of both apartments, and a neighbor. As presented to me that evidence was hearsay, however. Even accepting the statements on their face, the landlords and neighbor were not sure whether he lived with petitioner or whether he did not actually live at his own apartment. As noted, R.W.'s son made the allegations after an altercation when the son was trying to get back with his mother, and the mother was more than willing to agree with the allegations.

Finally, petitioner supposedly admitted that R.W. was at her house every day. However, she denied the admission, explaining that there were short periods when he was there regularly, but then other periods where she wouldn't see him.

Petitioner admits that R.W. and she were together often, in an on-and-off relationship. I cannot conclude that they lived together, however. Unlike virtually every other "father-in-the-home" case I have ever seen, the father in this case actually has a separate, distinct, verifiable residence. It strikes me as highly unlikely that he would pay $435 per month plus utilities for an apartment so that petitioner could receive more benefits.

CONCLUSIONS OF LAW

The county incorrectly added the father of petitioner's youngest child to her case because the evidence does not support a finding that he lives with petitioner.

THEREFORE, it is **ORDERED**

That the matter be remanded to the county with instructions to remove R.W. from petitioner's case retroactive to the benefit month beginning August 1, 2013, and to restore any BC+ coverage that may

have been lost during the period between then and this decision. The county shall do so within 10 days 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 24th day of September, 2013

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\sBrian C. Schneider
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 September 24, 2013.

Brown County Human Services
Division of Health Care Access and Accountability