



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/150587

PRELIMINARY RECITALS

Pursuant to a petition filed July 09, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on August 20, 2013, at Oshkosh, Wisconsin.

The issue for determination is whether the Department erred in denying backdated MA coverage for petitioner's husband to cover a period prior to the actual marriage.

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: Leslie Vosters

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner applied for MA on May 1, 2013.
3. Petitioner has a biological child.
4. Petitioner's significant other, whom she ultimately married, had three surgeries in May and June 2013.

5. Petitioner planned to have her fiancé adopt the child in order to qualify for MA. That adoption did not happen in May as planned. The couple then planned the wedding in order to have LeRoy qualify.
6. On July 3, 2013 petitioner contacted the agency and reported her marriage on July 1, 2013.
7. The agency enrolled petitioner in BC+ effective July 1, 2013.
8. Petitioner requested backdated enrollment to include May and June 2013.
9. The Department enrolled petitioner's husband effective July 1, 2013.
10. Petitioner appealed.

DISCUSSION

To qualify for BCP, a person must meet both non-financial and financial requirements. The petitioner clearly does not meet the BCP requirement that she be the parent or caretaker relative of a minor child residing in her home:

49.471 BadgerCare Plus. ...

- (4) GENERAL ELIGIBILITY CRITERIA/ APPLICABLE BENEFITS. (a) Except as otherwise provided in this section, all of the following individuals are eligible for the benefits described ...
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 is living in the home with the parent or caretaker relative ...
 - b. Except as provided in subd. 4.c., the individual's family income does not exceed 200 percent of the poverty line and does not include self-employment income. ...

Wis. Stat. §49.471(4)(a).

2.2.2 Caretaker Relative

A caretaker relative is a non-legally responsible relative to the child under his/her care. Caretaker relatives and their spouses can be eligible for BC+ as caretaker relatives. To be considered a caretaker relative of a child in the home, a person must first have a qualifying relationship to the child (under age 19) and the child must also be under the care of that relative.

Qualifying relationships for caretaker relatives consist of the following:

1. Stepfather ...

BCP Eligibility Handbook, §2.2.2.

Petitioner explained that she married LeRoy with the intent and understanding that the marriage would result in retroactive coverage for surgeries he had in May 2013. She explained that she had spoken with agency representatives who informed her that LeRoy's adoption of the child, even prior to the marriage would result in eligibility for LeRoy. But, petitioner concedes that the adoption did not happen and that the marriage did not occur until July 1, 2013. Petitioner could not articulate a basis for why eligibility should be backdated. She admitted confusion as to the communication she had with the agency prior to the marriage. It is true that if LeRoy had finalized the adoption of the child in May that he would have been covered by MA. But that did not happen. I do not see a basis under the rules to order such a backdate.

CONCLUSIONS OF LAW

The Department did not err in denying backdated eligibility for LeRoy for May and June because he had no legal status that would qualify him.

THEREFORE, it is

ORDERED

This appeal 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 12th day of September, 2013

\sJohn P. Tedesco
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 September 12, 2013.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability