



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/150649

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 11, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on August 13, 2013.

The issue for determination is whether respondent correctly denied petitioner's request for Medical Assistance benefits for February and March of 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: Ed Shefke

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED], MN; she lived in [REDACTED], WI in February and March of 2013.
2. Petitioner applied for Medical Assistance (MA) benefits on March 25, 2013, requesting benefits to commence in February, 2013.
3. Respondent requested verification of certain items, pursuant to a Notice of Proof Needed dated April 11, 2013. A second Notice of Proof Needed, specifically requesting petitioner's husband's 2012 taxes, was sent to petitioner on April 29, 2013. The deadline for providing verification was May 8, 2013.
4. The petitioner's husband's 2012 tax information was supplied to the respondent on June 20, 2013.
5. On May 6, 2013, respondent issued a notice to petitioner denying her request for MA benefits due to the fact that she resided in [REDACTED], Minnesota.

### DISCUSSION

A person must be a resident of Wisconsin to be eligible for medical assistance here. Residency is based upon "physical presence" and "the person's intent to maintain Wisconsin residence indefinitely." Wis. Admin. Code § DHS 103.03(3)(b). "Physical presence" means "living in Wisconsin." Wis. Admin. Code § DHS 103.03(3)(a)3. "Intent to reside" means that a person "intends that Wisconsin is the person's place of residence and that the person intends to maintain the residence indefinitely." Wis. Admin. Code § DHS 103.03(3)(a)2. A Minnesota resident cannot receive Wisconsin MA. *BadgerCare Plus Eligibility Handbook*, §3.1.

The facts of the situation are largely undisputed. The petitioner applied for benefits and was subsequently requested to supply certain verification of information provided in her application. There was a delay in obtaining certain verifications, i.e., 2012 tax information, and petitioner relocated to Minnesota prior to a final determination of her application. Petitioner did not inform the respondent of the relocation to Minnesota. When the respondent learned of the relocation following information received from the US Postal Service, petitioner's application was denied.

There is no dispute that petitioner was no longer a resident of Wisconsin when the respondent issued the denial on May 6, 2013. As such, petitioner never established her initial eligibility. During the fair hearing process, it is generally accepted that the state or county agency, as the party which has taken the action appealed from bears the burden of proof of the propriety of that action. *See, State v. Hanson*, 98 Wis.2d 80, 295 N.W.2d 209 (Ct.App.1980). Like most public assistance benefits, however, the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it was petitioner's job to demonstrate that she qualified for the benefits for which she had applied. The benefits application was submitted on March 25, 2013, and petitioner apparently relocated at some point during the approximately one-month period following application. Based on the evidence in the record, I cannot conclude that the respondent erred in determining that petitioner was not eligible for Wisconsin MA benefits in May of 2013, as petitioner was no longer a Wisconsin resident.

Petitioner argues that she is solely seeking benefits for the months of February and March, 2013, when she was a resident of Wisconsin. Again, however, I am constrained by the petitioner's relocation prior to approval. Petitioner needed to first establish eligibility prior to relocating to Minnesota. She did not do

so. Had petitioner supplied the verification information and obtained approval prior to her relocation, I may have reached a different conclusion here. Since she did not do so, and in light of the facts that, 1) the verification was not submitted until approximately 6 weeks after the May 8, 2013 deadline; and 2) petitioner did not notify the respondent of her relocation, I conclude that the petitioner did not establish by a preponderance of the evidence that she was eligible for Wisconsin MA.

### **CONCLUSIONS OF LAW**

1. Petitioner did not establish her initial eligibility for Wisconsin MA.
2. Respondent correctly denied petitioner's MA application based on her relocation to Minnesota prior to completion of the application process.

**NOW, THEREFORE, it is ORDERED**

That petitioner's appeal 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 18th day of September, 2013

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\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 September 18, 2013.

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