



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/150657

PRELIMINARY RECITALS

Pursuant to a petition filed July 12, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on August 23, 2013, at New Richmond, Wisconsin.

The issue for determination is whether the petitioner is entitled to BadgerCare Plus benefits.

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: Cheryl Odle

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The petitioner lives with [REDACTED]. On November 23, 2012, [REDACTED] had a baby.
3. The petitioner and [REDACTED] completed and signed a Voluntary Paternity Acknowledgement on November 25, 2012. This form was not recorded by the Court until March 11, 2013.

4. The child's birth certificate, which was filed on November 29, 2013, lists the petitioner as the child's father. The child has the petitioner's rather than her mother's last name.
5. On February 11, 2013, the St. Croix County Child Support Agency notified the petitioner that he must pay half of his child's birthing expenses, or \$3,086.48. This occurred after he had acknowledged paternity.
6. On May 15, 2013, the county agency notified the petitioner that "Your application for Medicaid/BadgerCare Plus for the months of November 2012, December 2012, January 2013, February 2013 for [petitioner] has been denied because Paternity had not been established and verified until 3/26/13 and therefore no eligibility exists until after that time."

DISCUSSION

The petitioner seeks medical assistance under BadgerCare Plus, which covers children under 19 and their parents. Wis. Stat. § 49.665. His primary reason for seeking benefits is that he had a child on November 23, 2012, and is required to pay half of the birthing expense. He began attempting to get benefits in February 2013, seeking them retroactive to November 2012, but the agency told him he was not eligible because he had not yet been legally determined to be the father. The basis of the agency's decision is the following policy found at *BadgerCare Plus Handbook*, § : 2.2.1.1.:

When the parents of the child were not married at the time of the child's birth, paternity must be established in order to determine the parental relationship for the father. Paternity is legally established only by a court order or by a Voluntary Paternity Acknowledgment Form (DPH 5024) signed on or after May 1, 1998 and filed with the state Vital Records office. A father's name on a birth certificate issued in Wisconsin on or after May 1, 1998, is evidence that paternity has been established.

The agency county agency contends that because the Voluntary Paternity Acknowledgment Form was not recorded in court until March 11, 2013, he cannot get benefits until after that date. It also contends that he was determined to be in non-cooperation status with the child support agency.

Whatever delays occurred in determining the petitioner's paternity were not his fault. On November 25, 2012, two days after his child was born, he signed a Voluntary Paternity Acknowledgement in front of a notary public. The child's birth certificate, which was filed on November 29, 2013, lists the petitioner as the child's father. The child has the petitioner's rather than her mother's last name. The petitioner received a letter indicating that he must pay half of the birthing expenses on February 11, 2013, which only occurred because he acknowledged he was the child's father.

Moreover, the agency position ignores that the same policy it relies upon to deny benefits indicates that a "father's name on a birth certificate issued in Wisconsin on or after May 1, 1998, is evidence that paternity has been established." *BadgerCare Plus Handbook*, § : 2.2.1.1. That policy later states: "**Note:** If a father's name appears on a Wisconsin Birth Certificate for a child born after May 1, 1998, it means paternity has been established." *Id.* Throughout this process the petitioner was told both that he had to be added to the mother's existing case or apply himself, and it was months before the agency ever gave him a written response.

The agency does not challenge that benefits could begin in November 2012 on any ground other than that he had not yet established paternity. I assume from this that he had been listed as living with the mother of his child before then and was ineligible because he, unlike her, did not have a child under 19. Nor was there any challenge to the timeliness of he appeal. Based upon this, I find that he is eligible for BadgerCare Plus retroactive to November 2012.

CONCLUSIONS OF LAW

The petitioner is eligible for BadgerCare Plus retroactive to November 1, 2012.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions to take all steps necessary to find the petitioner eligible for BadgerCare Plus retroactive to November 1, 2012.

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 16th day of September, 2013

\sMichael D. O'Brien
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 16, 2013.

St. Croix County Department of Human Services
Division of Health Care Access and Accountability