



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/150928

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Brown County Human Services in regard to Medical Assistance (MA), a hearing was held on September 5, 2013, at Green Bay, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner's BadgerCare Plus (BCP), due to lack of nonfinancial eligibility.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Lue L. Yang, paralegal
201 West Walnut, Suite 203
Green Bay, WI 54303-5711

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Theresa Sommerfeldt, ES Spec.
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. Prior to July 2013, the petitioner was certified for BCP. BCP is a Wisconsin variant of MA for low income families containing minor children. The petitioner's case was reviewed in June 2013. After receiving inconclusive evidence regarding the placement time of the petitioner's two children, the agency determined that the petitioner no longer had at least 40% placement time with a child. The children's mother does not reside with the petitioner.
3. On June 18, 2013, the agency notified the petitioner that his BCP would end effective July 1, 2013. On July 3, 2013, the agency followed up with another notice that advised that the BCP would remain closed effective June 30, 2013, because no child was residing with the petitioner at least 40% of the time. The petitioner appealed.
4. On July 27, 2011, a circuit court order was entered that ended the petitioner's child support obligation for his two children. This implies that the petitioner's two children were spending a significant amount of time with him.
5. From June through August 2013, the petitioner's two children, ages 12 and 9, spend alternating full weeks with the petitioner, and then with their mother.
6. The petitioner works from 5:00 a.m. to 8:30 a.m., Monday through Friday. In September 2013, he picks the children up from school and supervises them from 2:30 p.m. until 6:15 p.m., Monday through Thursday (15 hours). Their mother picks them up at 6:15 p.m. and takes them to her residence overnight. The petitioner also has the children in his care from 2:30p.m. Friday through Monday morning at 5:00 a.m. (62.5 hours). These amounts total 77.5 hours out of 168 hours in a week, which exceeds the 67.2 hours needed to achieve a 40% weekly placement.

DISCUSSION

BadgerCare Plus is an expansion of the Wisconsin Medical Assistance program meant to provide insurance for children under 19 and their parents. *BadgerCare Plus Eligibility Handbook (BCPEH)*, 1.1. There are two major BCP benefit plans. In general, to be eligible for any BCP plan, a family cannot have income greater than 200% of the poverty line. Wis. Stats. §49.471(8). The poverty line benchmarks may be viewed at *BCPEH* at §50.1, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

In the instant case, the agency determined that the petitioner was not eligible for BadgerCare Plus for a *nonfinancial* reason. To qualify for BCP, the statute requires that an adult must have be the parent of a child who is residing in the adult's home, or be working toward family unification by complying with a permanency plan:

(4) GENERAL ELIGIBILITY CRITERIA ... (a) ... all of the following individuals are eligible for the benefits ...:

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 living in the home with the parent* or caretaker relative or who temporarily absent from the home for not more than 6 months or, if the child has been removed from the home for more than 6 months, the parent or caretaker relative is working toward unifying the family by complying with a permanency plan under s.48.38 or 938.38. ...

(emphasis added)

Wis. Stat. §49.471(4)(a). The statute does not provide further direction as to how much time a child needs to be placed in a parent's home to be "living in the home" with the parent.

The Department's policy handbook contains the following elaboration:

2.2.1.2 Joint Placement

*When the natural or adoptive parents of a child do not live together, and have joint placement arrangements for the child (through a mutually agreed upon arrangement or court order), only one parent can be determined eligible at a time unless there is reasonably equivalent placement. Reasonably equivalent placement means that the child is residing with each parent at least **40% of the time during a month.***

If the child is not residing with both parents at least 40% of the time, only the parent with the greater percentage of the placement time may apply on behalf of the child and/or for him or herself as the caretaker relative of that child.

If only one parent of a child is applying for BC+ and he or she is stating that they have placement of the child for at least 40% of the time, accept the declaration unless it is questionable.

.... [*emphasis added*]

BCPEH, §§2.2.1.2.

At the time the Department made its decision, it had a letter from the children's mother declaring that the petitioner has the children at least 40% of the time. However, the letter was somewhat vague, in that it did not identify the exact times of placement. The petitioner is illiterate, so he perhaps was unaware of the letter's deficits. The petitioner rectified this ambiguity via his hearing testimony. Therefore, the Department's decision to discontinue the petitioner's BCP effective July 1, 2013, proved to be incorrect.

CONCLUSIONS OF LAW

1. The discontinuance of the petitioner's BCP effective July 1, 2013, because there is no minor child living in the petitioner's home, was incorrect.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to re-instate the petitioner's BCP certification effective July 1, 2013, if he was otherwise eligible. This action shall be taken within 10 days of the date 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 6th day of September, 2013

\sNancy J. Gagnon
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 6, 2013.

Brown County Human Services
Division of Health Care Access and Accountability
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