



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/150973

PRELIMINARY RECITALS

Pursuant to a petition filed July 25, 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 telephonic hearing was held on September 09, 2013, at Oshkosh, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's BadgerCare Plus benefits effective August 1, 2013, because she is not a "qualified relative" of the child.

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

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County who resides with her boyfriend, [REDACTED] and his granddaughter, CD.

2. Petitioner is not a relative of CD.
3. [REDACTED] [REDACTED] and petitioner, [REDACTED] [REDACTED] [REDACTED], have joint legal guardianship of CD per Winnebago County Circuit Court Case No. 12 GN 144 effective September 13, 2012.
4. The petitioner received BadgerCare (BC) Plus benefits in a household of three.
5. The county agency sent a July 18, 2013 Notice of Decision to the petitioner stating that her BC benefits would discontinue effective August 1, 2013, because she was not a “qualified relative” of CD, and did not have any other non-financial eligibility for continued BC.
6. The guardian of a child is not a “qualifying relative” for BC eligibility purposes per BadgerCare Plus Eligibility Handbook, § 2.2 and § 2.2.1.

DISCUSSION

The Department’s written BadgerCare Plus policy states as follows:

The *BC+ Test Group* includes the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. Inclusion in the Test Group is determined by qualifying relationships and legal responsibility.

Anyone in the home who meets the criteria of being in the BC+ Test Group, is always included in the group whether or not s/he requested BC+.

Persons in the home who do not meet the criteria to be in a BC+ Test Group must be excluded. However, they may be included in a BC+ Test Group in another case.

BadgerCare + Eligibility Handbook, § 2.2.

The *BC+ Eligibility Handbook* further states:

The BC+ Test Group for a primary person who is residing with his or her own child or with a spouse and the spouse’s child will include the following individuals:

1. The primary person and the primary person’s spouse.
2. A child under age 19 of the primary person or the primary person’s spouse.
3. A co-parent of a primary person’s child or the co-parent of the spouse’s child.
4. Any spouse of a co-parent.
5. Any child under age 19 of a co-parent.
6. The other parent of a co-parent’s child.
7. A child of the primary person’s child or the spouse’s child.
8. The spouse of an included child, if that child is a parent, or the spouse is under age 19.
9. The co-parent of an included grandchild.
10. A child under age 19 who is a qualified relative of, and residing with, the primary person, the primary person’s spouse or another included adult.
11. An essential person. (2.2.1.3)

BadgerCare + Eligibility Handbook, § 2.2.1. And see, Wis. Admin. Code §DHS 103.03(1)(f).

During the September 9, 2013 hearing, petitioner admitted that she is not a relative, but explained that she acts in a “parental role” with CD. She did not dispute that she is the girlfriend of [REDACTED]. The county agency representative explained that if Mr. [REDACTED] (as CD’s grandfather), applied as the primary person or casehead on the BC case, then the household would continue to be eligible for BC Plus benefits. However, petitioner indicated that Mr. [REDACTED] was unwilling for some unstated reason to apply for BC. Furthermore, petitioner was unable to refute that based upon the above law and policy she was not eligible for BC care as the primary person or case head. Moreover, petitioner was unable to establish any other basis for BC non-financial eligibility. Accordingly, based upon the above, I must conclude that the county agency correctly discontinued the petitioner’s BadgerCare Plus benefits effective August 1, 2013, because she not a “qualified relative” of the child.

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner’s BadgerCare Plus benefits effective August 1, 2013, because she is not a “qualified relative” for BC eligibility purposes per BadgerCare Plus Eligibility Handbook, § 2.2 and § 2.2.1 and has no other basis for non-financial eligibility.

THEREFORE, it is

ORDERED

The petition for review herein be and the same 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 28th day of October, 2013

\sGary M. Wolkstein
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 October 28, 2013.

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