



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/151109

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 30, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on September 03, 2013.

The issue for determination is whether the county agency correctly discontinued the petitioner's BadgerCare Plus Medical Assistance for lack of cooperation with the child support agency (determination of paternity).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Jon Pinkert  
454 Kentucky St  
PO Box 89  
[REDACTED] WI 54235

Respondent:

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

By: Alicia Free

Manitowoc County Department of Human Services  
3733 Dewey Street  
Manitowoc, WI 54221-1177

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. Petitioner was an ongoing recipient of BadgerCare Plus (BCP). Her benefits were terminated as of January 1, 2013, pursuant to a December 19, 2013, notice mailed to petitioner at a [REDACTED], Wisconsin address.
3. The agency's basis for discontinuance was that the petitioner failed to cooperate with the child support agency in establishing the paternity of her child, MD, born September 12, 2012. The petitioner contests this rationale.
4. MD was born, unexpectedly, at home, and mother and child were subsequently transported to a hospital.
5. BCP benefits were restored to petitioner effective February 1, 2013, after petitioner was able to establish MD's paternity, pursuant to a February 21, 2013, notice mailed to petitioner at a [REDACTED], Wisconsin address.

### DISCUSSION

BCP policy is very clear in requiring cooperation with establishing paternity of proposed recipients of BCP:

Unless the person is exempt, has *good cause* for refusal to cooperate (see 5.3), each *applicant* /member that is referred, must, as a condition of eligibility, cooperate in:

1. Establishing the paternity of any child born out of wedlock for whom BC+ is requested or received, and
2. Obtaining medical support for the applicant and for any child for whom BC+ is requested or received.

Cooperation includes any relevant and necessary action to achieve the above. As a part of cooperation, the applicant may be required to:

1. Provide verbal or written information known to, possessed by, or reasonably obtainable by the applicant.
2. Appear as a witness at judicial or other hearings or proceedings.
3. Provide information, or attest to the lack of information, under penalty of perjury.
4. Pay to the CSA any court ordered medical support payments received directly from the absent parent after support has been assigned.
5. Attend office appointments as well as hearings and scheduled genetic tests.

**Note:** The applicant or member is only required to cooperate if the child under their care is eligible for benefits funded under Title 19 or is eligible for the Medicaid expansion category of the Children's Health Insurance Program (CHIP). If the child's BC+ benefit is funded through any other source such as Title 21 Separate CHIP or GPR (i.e., state funds) the *caretaker relative* is not required to cooperate and cannot be sanctioned for non cooperation. Check the Medical Status codes (See 51.1) to determine funding source. The CSA will monitor the child's BC+ funding source.

*BadgerCare Plus Eligibility Handbook (Handbook) § 5.2.1.*

The respondent argues that the petitioner was found to be non-cooperative, and therefore does not qualify for BCP benefits in January, 2013. The respondent specifically testified that, due to a lack of a vital record concerning MD, the respondent was unable to establish paternity. The respondent notes that the non-cooperation ended on February 15, 2013, and petitioner's BCP benefits were restored. Uncorroborated hearsay evidence was submitted to establish the respondent's conclusion here. Hearsay is admissible in administrative hearings. Wis. Stat. § 227.45(1). However, as the Wisconsin Supreme Court has stated, "[P]roperly admitted evidence may not necessarily constitute substantial evidence." *Gehin v. Wisconsin Group Insurance Board*, 278 Wis. 2d 111, ¶ 52 (2005). In *Gehin*, the court held that uncorroborated medical records that were contradicted by the petitioner's sworn testimony were not substantial evidence to support a decision to deny the petitioner coverage. *Id.* at ¶¶ 80-82. In short, I am barred from deciding a contested matter of fact on the basis of uncorroborated hearsay.

The main issue here concerns the allegation that petitioner was not cooperating with establishing the paternity of MD. I find nothing in the record to support such a contention.

The petitioner testified that MD was born at home. This was not planned. While at the hospital following the home birth, petitioner filled out forms that she assumed were necessary for MD's vital records. The petitioner credibly noted that she had filled out similar forms after the birth of her older child, LD. She stated that she understood that she had provided the necessary information for vital records purposes, and that nothing further was required.

The petitioner recalls that she was contacted by the respondent a couple of months after MD's birth, and informed that she needed to establish MD's paternity. Petitioner and MD's father met with a worker at the county agency to settle the paternity issue and, several weeks later, received MD's vital records. Notably, none of the petitioner's testimony was specifically countered by the respondent.

As noted in the *Handbook* section cited above, cooperation includes any relevant and necessary action to establish the paternity of MD. See, *Handbook* § 5.2.1. I am satisfied that the petitioner complied with this requirement. The respondent has not established any undue or unnecessary delay by the petitioner in cooperating with the establishment of MD's paternity. The petitioner has demonstrated that she reasonably believed that paternity was established in the hospital shortly following MD's birth. As soon as she learned of the lack of vital records, she addressed the issue. As such, based upon the record before me, I cannot find that the petitioner refused to cooperate with the establishment of MD's paternity.

### **CONCLUSIONS OF LAW**

The respondent has not established that it correctly terminated petitioner's BCP benefits during the month of January, 2013, due to petitioner's refusal or failure to cooperate with the establishment of MD's paternity.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the respondent to reinstate petitioner's BCP benefits for the month of January, 2013. All action required pursuant to this Order shall be completed within 10 days following issuance 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 10th day of October, 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 October 10, 2013.

Manitowoc County Department of Human Services  
Division of Health Care Access and Accountability  
[jpinkert@pinkertlawfirm.com](mailto:jpinkert@pinkertlawfirm.com)