



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/152228

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 19, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Jefferson County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on November 6, 2013, at Jefferson, Wisconsin.

The issues for determination are (1) whether petitioner's appeal was timely filed, and (2) whether the agency correctly discontinued the petitioner's adult BCP benefits effective July 1, 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Sandy Torgerson, ES Supr.  
Jefferson County Department of Human Services  
Workforce Development Center  
874 Collins Rd.  
Jefferson, WI 53549

**ADMINISTRATIVE LAW JUDGE:**

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

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Jefferson County.
2. Prior to July 2013, the petitioner had an open BCP case for herself and her minor children. On May 20, 2013, she correctly reported to the Department that her ex-husband, who is also the

father of her children, had moved into the household. The agency then added his income to the case, which put the household over the income limit for adult BCP

3. On June 7, 2013, the county agency sent a written notice to the petitioner, advising that her adult BCP would be discontinued effective July 1, 2013. See, Exhibit 2, notice. The notice also advised that a \$20 monthly premium would be required for continued coverage of the children. The hearing request deadline identified in the notice was July 23, 2013.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on September 19, 2013.

### **DISCUSSION**

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed *80* days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

As an informational point for the petitioner, the Wisconsin statute that defines BCP counts a parent as a household member when he is living with his children. The BCP definition of a parent is as follows:

#### **49.471 BadgerCare Plus.**

(1) DEFINITIONS. ...

(i) "Parent" has the meaning given in s. 49.141 (1) (j).

..  
**49.141(1)** ...

(j) "Parent" means any of the following:

1. A biological parent.
2. A person who has consented to the artificial insemination of his wife under s. 891.40.
3. A parent by adoption.
4. A man adjudged in a judicial proceeding to be the biological father of a child if the child is a nonmarital child who is not adopted ...
5. A man who has signed and filed with the state registrar under s. 69.15 (3) (b) 3. a statement acknowledging paternity.

Wis. Stat. § 49.471(1)(j), cross-referencing § 49.141(1)(j).

### **CONCLUSIONS OF LAW**

There is no jurisdiction as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is 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 7th day of November, 2013

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\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 November 7, 2013.

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