



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/152236

PRELIMINARY RECITALS

Pursuant to a petition filed September 19, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Barron County Department of Human Services in regard to Medical Assistance, a hearing was held on October 21, 2013, at Barron, Wisconsin.

The issue for determination is whether a person can receive BadgerCare Plus as a caregiver relative if he is the guardian of his daughter's stepson.

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: Candi Gillette

Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Barron County.
2. The petitioner is the legal guardian of [REDACTED], a minor.
3. The petitioner's daughter married [REDACTED]'s father. [REDACTED]'s mother is in prison.

- 4. Neither [REDACTED]'s mother nor her father's parental rights have been terminated, but neither they nor the petitioner's daughter are involved in raising him.

DISCUSSION

BadgerCare Plus provides medical assistance to children under 19, their parents or other caretaker relatives who live with them, and pregnant women. Wis. Stat. § 49.471(4). "Caretaker relative is defined in Wis. Stat. § 49.471(b) as

an individual who is maintaining a residence as a child's home, who exercises primary responsibility for the child's care and control, including making plans for the child, and who is any of the following with respect to the child:

- 1. A blood relative, including those of half-blood, and including first cousins, nephews, nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.
- 2. A stepfather, stepmother, stepbrother, or stepsister.
- 3. An individual who is the adoptive parent of the child's parent, a natural or legally adopted child of such individual, or a relative of an adoptive parent.
- 4. A spouse of any individual named in this paragraph even if the marriage is terminated by death or divorce.

The county agency denied BadgerCare Plus to the petitioner because it contends that he is not a caretaker relative of [REDACTED], a child for whom he has guardianship. The situation is that his daughter married the father of [REDACTED] after the child's mother went to prison. The father then developed his own legal difficulties, and the petitioner's daughter cannot care for him. The petitioner took over the child-rearing duties and is clearly [REDACTED]'s caretaker. Nevertheless, the Division of Hearings and Appeals must follow the law as it is written, which means that to receive BadgerCare Plus the petitioner must meet the legal definition of a "caretaker *relative*." He is not [REDACTED]'s blood relative, stepfather, or stepbrother. Although it appears that [REDACTED]'s biological parents have abandoned him, their parental rights have not been terminated, so there is no adoptive parent. Finally, the petitioner is neither a spouse of [REDACTED]'s relatives, stepmother or stepsister, nor is he someone related to [REDACTED] by adoption. Because he is not related to [REDACTED] by blood, marriage, or adoption, he cannot be considered [REDACTED]'s caretaker relative for BadgerCare Plus purposes, even though he is providing the same care as one who meets the definition. As a result, I must find that he is not eligible for BadgerCare Plus.

CONCLUSIONS OF LAW

The petitioner is not eligible for BadgerCare Plus because he is not a caretaker relative to his daughter's stepson.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 11th day of November, 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 November 11, 2013.

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