



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FPO/152365

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 24, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on December 02, 2013, at Madison, Wisconsin. At the time scheduled for hearing, this ALJ attempted to reach an agency representative at the number designated for the Dane County hearings and the agency did not answer the telephone. I also attempted to reach the worker at his desk and there was no answer. He contacted me later after the hearing was concluded.

The issue for determination is whether the agency erred in terminating petitioner's family planning (FP) benefit.

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, Room 651  
Madison, Wisconsin 53703

By: No appearance.

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. Petitioner receives the family planning only benefit under state MA.
3. Petitioner has always lived in Madison. She presently attends college in Minnesota. She has a Wisconsin driver's license and is registered to vote in Wisconsin. Her college records her permanent address for purposes of enrollment and financial aid as Madison, WI. She pays Wisconsin tuition costs for her college tuition. Petitioner retains employment at [REDACTED] in Madison, WI and returns to Madison to work at least once a month. She returns to Madison for breaks from school where she stays in her childhood home with her parents.
4. On September 3, 2013 the agency sent notice to petitioner informing her that her benefits were terminated effective October 1, 2013 because she is not a Wisconsin resident.
5. Petitioner appealed.

### DISCUSSION

The Wisconsin administrative code, § HFS 102.0(2), states that "application for Wisconsin MA shall not be accepted for a person residing outside Wisconsin." The county agency denied BadgerCare Plus to the petitioner because she is a student in Minnesota and has a work-study job there. The petitioner, who requires medical care because she is pregnant, was denied MA by Minnesota because she lives in Wisconsin when not attending college and pays income taxes to, holds a driver's license from and votes in Wisconsin.

The *BadgerCare Plus Eligibility Handbook* contains several relevant policies about the program. First it states that to be a resident the person must meet the following two requirements:

1. Be physically present in Wisconsin. (There is no minimum requirement for the length of time the person has been physically present in Wisconsin.) and
2. Express intent to reside in Wisconsin.

*BadgerCare Plus Eligibility Handbook*, § 3.1.

Concerning absences from Wisconsin, it states:

Once established, Wisconsin residency is retained until :

1. The person notifies states [sic] that they no longer intend to reside in Wisconsin,
2. Another state determines the person is a resident in that state for Medicaid/Medical Assistance,
3. Other information is provided that indicates the person is no longer a resident.

*BadgerCare Plus Eligibility Handbook*, § 3.5.

Finally, the *Handbook*, § 3.5.1, states that "[t]emporary absence ends when another state determines the person is a resident there for Medicaid/Medical Assistance purposes."

There is no question that the petitioner established Wisconsin residence before she went to college. Although there is no record of her expressing intent at that point to remain in Wisconsin, it can be inferred because even after she began attending school in Minnesota she kept voting in Wisconsin, returns to Wisconsin during all of her school breaks, and retains a Wisconsin driver's license. Since establishing residency in Wisconsin she has not notified the state that she no longer intends to reside there. Nor has Minnesota determined that she is resident of its state for medical assistance purposes. Based upon this I find that she remains a resident of Wisconsin who is absent when she attends school.

**CONCLUSIONS OF LAW**

The petitioner is a resident of Wisconsin for MA purposes.

**NOW, THEREFORE, it is ORDERED**

That this matter is remanded to the county agency with instructions to reinstate FP benefits retroactive to October 1, 2013. This action must be completed within 10 days.

**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, Room 651, 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 27th day of December, 2013

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\sJohn P. Tedesco  
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 December 27, 2013.

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