



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/152912

PRELIMINARY RECITALS

Pursuant to a petition filed October 16, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on November 12, 2013, at Racine, Wisconsin.

The issue for determination is whether the agency correctly terminated Petitioner's BadgeCare+ benefits.

NOTE: The record was held open until November 18, 2013 to give the Petitioner an opportunity to supplement the record. Petitioner submitted the custody/placement agreement for her daughter. This has been marked as Exhibit 3. Petitioner also submitted the custody/placement agreement for her three sons. This has been marked as Exhibit 7 and entered into the record.

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: Rhonda Kramer, Economic Support Specialist - Lead
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Racine County.

2. On September 30, 2013, the agency sent Petitioner a notice indicating that as of November 1, 2013, she would no longer be enrolled in BadgerCare+ because her children did not reside with her. (Exhibit 5)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 16, 2013. (Exhibit 1)
4. Petitioner and the father of her daughter share placement of the daughter. The child resides with the father during the school year and visits with Petitioner on weekends. During the summer the child resides with Petitioner. They also have joint custody. (Exhibit 3)
5. Petitioner and the father of her sons entered into a stipulation and order modifying placement and child support on October 17, 2012. (Exhibit 8)
6. Per the October 17, 2012, agreement, Petitioner has joint custody of her sons. The agreement also stated that placement would be 50/50, with the Petitioner having the children every Monday and Tuesday, the father having the children every Wednesday and Thursday and the parents rotating the weekends Friday through Sunday. (Exhibit 8)
7. At some point, Petitioner and the father of her sons deviated from the agreement to allow the children to attend better schools. So during the school year, the children are now with the father Monday through Friday and with Petitioner Saturday and Sunday. Petitioner also has the children on all vacation days from school and through the summer months. (Testimony of Petitioner; Exhibit 4)

DISCUSSION

BadgerCare Plus (BC+) is a state/federal program that provides health coverage for Wisconsin Families. *BadgerCare + Eligibility Handbook (BEH) §1.1.1*. Thus, in order to be eligible for BadgerCare+ benefits an individual must either be a child under 19, a pregnant woman or a parent or caretaker of a child. *BEH §2.1*.

In situations where both parents reside in Wisconsin, “only one parent can be determined eligible at a time unless there is reasonably equivalent placement. Reasonably equivalent placement means that the child is residing with each parent at least 40% of the time during a month.” *Emphasis added, BEH §2.2.1.2* If there is joint custody and placement exists with a parent who lives in another state, the child must be with the Wisconsin parent at least 50% of the time in a month to qualify for BC+. *BEH §2.2.1.2*

Although there is a court order in place requiring 50/50 placement and custody of her sons, Petitioner and the father of her children chose to deviate from the placement agreement so the children could attend better schools. Consequently, Petitioner has the children on weekends, days off from school and during the summer break. Petitioner has a similar arrangement for her daughter. While it is clear that primary placement is with the children’s fathers during the school year, it is unclear what the exact percentage of time Petitioner has the children each month, given that the Petitioner has the children on all days off and there is an upcoming Thanksgiving and Christmas break.

The agency will have to get the children’s academic calendar to see how many days off from school the children have each month.

CONCLUSIONS OF LAW

The agency incorrectly terminated Petitioner’s BadgerCare+ benefits, effective November 1, 2013.

THEREFORE, it is

ORDERED

That within ten days of this decision, the agency request verification from Petitioner of all vacation days she has with her children. The agency shall give Petitioner ten days to provide the requested verification.

Immediately upon receipt of said verification, the agency shall re-determine Petitioner's eligibility for BadgerCare+ benefits and issue a new notice of decision to the Petitioner.

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 Milwaukee,
Wisconsin, this 19th day of November, 2013.

\sMayumi M. Ishii
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 19, 2013.

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