



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/155391

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 7, 2014, under Wis. Stat., §49.45(5)(a), to review a decision by Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on March 12, 2014, by telephone.

The issue for determination is whether the agency erred by putting petitioner's daughter on her mother's case because her case was open before petitioner's case.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jose Silvestre  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has one daughter, D.T., whose mother is A.L. A.L. has had an ongoing benefit case with child as part of her household.
3. On January 24, 2014, petitioner filed a change report showing that D.T. resides with him more than with A.L. He included a copy of a motion for change of custody to him. The agency took D.T. off A.L.'s case and put her on petitioner's case for February, 2014. At that point A.L.

complained, and the agency worker noticed that petitioner had provided a copy of a motion for change of custody but not the order that followed.

4. The order that followed petitioner's motion, dated December 30, 2011, provided for joint custody and joint placement. In addition, the Department's KIDS child support screen showed A.L. as the primary caretaker. Therefore the agency worker removed D.T. from petitioner's benefit case effective March 1, 2014 and added her back to A.L.'s case on the grounds that A.L. had D.T. on her case first. Petitioner then appealed.

### **DISCUSSION**

D.T. is eligible for BadgerCare Plus (BC+) MA regardless of which parent's case she is on. However, in concurrent case no. FOO-155392, I ordered the agency to examine which parent should be listed as D.T.'s primary parent for benefit purposes. Since that determination will affect which parent's case D.T. will be under for BC+ purposes, I will simply reiterate the order for this case as well.

### **CONCLUSIONS OF LAW**

The agency erred by determining that petitioner's daughter should remain on her mother's case without first examining which parent should be listed as the primary parent following petitioner's request for a change.

**THEREFORE, it is**

### **ORDERED**

That the matter be remanded to the agency with instructions to determine which parent should be the primary parent for D.T. for the issuance of benefits, going through the current placement arrangement and the FS Handbook questions. The agency shall take the action within 10 days of this decision and make the determination for the next possible benefit month.

### **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 13th day of March, 2014

---

\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 13, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability