



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

BCS/156015

PRELIMINARY RECITALS

Pursuant to a petition filed March 12, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Portage County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on April 24, 2014, at Stevens Point, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner's February, 2014 BadgerCare (BC) application, due to petitioner failing to establish her State of Wisconsin residence during the period of her BC application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Representative:

[Redacted] [Redacted], mother and POA
[Redacted]
[Redacted]

Respondent:

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

By: Whitney Wilkinson, ESS
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 26 year old who in the past resided with her mother, [REDACTED] [REDACTED], in Portage County.
2. The petitioner worked at [REDACTED] [REDACTED] [REDACTED], LLC in Madison, WI from October 18, 2012 through April 14, 2013, and her last paycheck was May 3, 2013.
3. The petitioner has been residing in [REDACTED] participating in the [REDACTED] Program during the period from August 27, 2013 through June 30, 2014.
4. The petitioner's mother is the POA for the petitioner.
5. Petitioner's mother filed an application as POA for petitioner for health care through the Affordable Care Act on or about January 1, 2014. The address on that application was petitioner's mother's address.
6. In the past, petitioner was covered through her mother's health insurance policy, but could not continue on that policy due to her petitioner's age.
7. The county agency received the petitioner's BadgerCare Plus application on or about February 10, 2014.
8. The county agency sent a February 26, 2014 Notice of Decision to the petitioner stating that her January, 2014 BadgerCare application was denied because petitioner has not established that she resided in Wisconsin during the period of her BC application.
9. The county's basis for the denial was that petitioner has not established residence in Wisconsin and was not "temporarily absent" per BadgerCare Plus Eligibility Handbook, 3.5 as she has no current employment or residence in Wisconsin, and has not established her intent to return to reside in Wisconsin as she has no established residence per BC 3.3.
10. The petitioner has not established any employment or residence in Wisconsin after the end of her program in [REDACTED] as of June 30, 2014.

### DISCUSSION

A person must reside in Wisconsin to be eligible for BadgerCare Plus. *BadgerCare Plus Handbook*, § 3.1. Residence is based upon "physical presence" and "the person's intent to maintain Wisconsin residence indefinitely." Wis. Admin. Code § DHS 103.03(3)(b). "Physical presence" means "living in Wisconsin." Wis. Admin. Code § DHS 103.03(3)(a)3. "Intent to reside" means that a person "intends that Wisconsin is the person's place of residence and that the person intends to maintain the residence indefinitely." Wis. Admin. Code § DHS 103.03(3)(a)2.

Once established, Wisconsin residency is retained until: 1) The person notifies states that they no longer intend to reside in Wisconsin; 2) Another state determines the person is a resident in that state for Medicaid/Medial Assistance; or 3) Other information is provided that indicates the person is no longer a resident. (Emphasis added) *BadgerCare Plus Handbook*, § 3.5.

The Medicaid Eligibility Handbook explains that once established, Wisconsin residence is retained until abandoned. Being out-of-state, in and of itself, is not abandoning residence. Residence is not abandoned when an MA group or group member is temporarily out-of-state. Handbook, 3.5.1. Temporary absence only ends when another state determines the person is a resident there for MA purposes.

During the hearing and in its exhibits, the county agency presented a persuasive case based upon the above BC policy that petitioner was not a Wisconsin resident for BadgerCare eligibility purposes during the time of her January/February, 2014 BC application. The hearing record is clear that petitioner worked at █████ █████ █████, LLC in Madison, WI from October 18, 2012 through April 14, 2013 and her last paycheck was May 3, 2013. However, petitioner's representative and POA was unable to establish with any reliable evidence that petitioner had any continued Wisconsin residence after her employment ended on April 14, 2013 or that petitioner obtained any employment prior to her departure for her █████ project during about August, 2013. See Findings of Fact #2 and #3 above. ESS Wilkinson asserted correctly that the "temporary absence" exception would not be applicable in the petitioner's circumstances as petitioner did not establish any Wisconsin residency prior to her departure to █████.

The petitioner's representative did not establish that during the period of petitioner's February, 2014 BC application petitioner had documented with any lease or any other document her intent to return to reside in Wisconsin or had obtained a commitment for employment from a Wisconsin employer if she returned to Wisconsin. Finally, petitioner did not establish that she was only temporarily absent from Wisconsin. Petitioner did not provide any reliable documentation of the return of petitioner to Wisconsin after the completion of her Israeli project on or about June 30, 2014. Accordingly, based upon the above, I must conclude that the county agency correctly denied the petitioner's February, 2014 BadgerCare (BC) application, due to petitioner failing to establish her State of Wisconsin residence during the period of her BC application.

### CONCLUSIONS OF LAW

The county agency correctly denied the petitioner's February, 2014 BadgerCare (BC) application, due to petitioner failing to establish her State of Wisconsin residence during the period of her BC application.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 9th day of June, 2014

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\sGary M. Wolkstein  
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 June 9, 2014.

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