



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/156579

PRELIMINARY RECITALS

Pursuant to a petition filed April 04, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Oneida County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on May 19, 2014, at Rhinelander, Wisconsin. At the request of the parties, the record was held open for consecutive closing arguments to the Division of Hearings and Appeals (DHA) and exchanged between the parties. DHA timely received (with an extension) the closing arguments from both parties, and those arguments are received into the hearing record.

The issue for determination is whether the county correctly denied the petitioner's October 3, 2013 Good Cause claim for not cooperating with the child support agency.

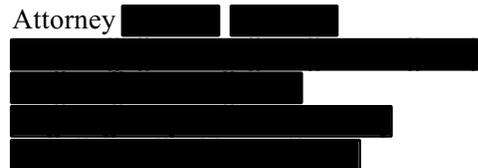
There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Amy Mayo, ES Supervisor
Oneida County Department of Social Services
Oneida Avenue
PO Box 400
Rhinelander, WI 54501

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County who resided with her son, BR, who was born August 22, 2013.
2. The alleged father of BR is [REDACTED].
3. On September 24, 2013, petitioner filed a good cause claim which stated: "I believe my cooperation could result in physical and/or emotional harm to [REDACTED] due to the fact that [REDACTED] is violent and abuses drugs and alcohol."
4. On October 3, 2013, petitioner and ES Supervisor, Amy Mayo, met to discuss petitioner's good cause claim for not cooperating with the child support agency. Ms. Mayo denied that good cause claim, and told petitioner that she did not believe that petitioner or the child were in danger.
5. During the October 3, 2013 meeting, petitioner expressed concerns regarding custody and placement of the child which is being addressed in the Oneida County paternity case in Case No. 14 PA 01.
6. The October 3, 2013 good cause form only stated vaguely that petitioner could "request a hearing."
7. The county agency did not send any adequate notice to the petitioner stating that petitioner's good cause claim was denied, and that petitioner must file any appeal at the Division of Hearings and Appeals (DHA) within 45 days of that denial notice for a timely appeal.
8. The petitioner was unaware of the 45 day appeal period to DHA, and filed an April 4, 2014 to DHA in the belief that she could appeal the good cause claim.
9. During the May 19, 2014 hearing and while the record was held open, petitioner did not document with any reliable evidence that that petitioner or the child were likely in physical or emotional danger to establish good cause for not cooperating with the child support agency.

DISCUSSION

The petitioner's April 4, 2014 appeal of the denial of her good cause claim was timely due to the county agency's lack of adequate and timely notice sent to the petitioner. See finding of Fact # 3 - #8 above.

As a condition of participation in the BadgerCare program, an applicant or recipient of BC is required to cooperate with the Child Support Agency (CSA) in establishing the paternity of any child born out of wedlock for whom MA is requested or received and to help in pursuing child support payments from the other parent. The CSA determines if an individual is cooperating and notifies the economic support agency whether BC benefits should be sanctioned. Good cause reasons for non-cooperation include threat of physical or **emotional harm to the child or the parent and fitness of the individual as a parent.** BadgerCare Plus Eligibility Handbook, sec. 5.3. The person can regain eligibility by cooperating with the CSA.

BadgerCare Plus Eligibility Handbook, sec. 5.3. provides that any parent or other caretaker relative who is required to cooperate in establishing paternity and obtaining medical support may claim good cause. S/he must:

1. Specify the circumstance that is the basis for good cause **and**
2. **Corroborate the circumstance according to the evidence requirement in 5.3.5.**

BadgerCare Plus Eligibility Handbook, sec. 5.3. *Circumstances*

The IM agency must determine whether or not cooperation is against the best interest of the child. Cooperation is waived only if:

1. The parent or caretaker's cooperation is reasonably anticipated to result in physical or **emotional harm** to the: a) **Child**. This means that the child is so emotionally impaired, that his or her normal functioning is substantially affected, or b). **Parent or Caretaker**. This means the impairment is of such a nature or degree that it reduces that person's capacity to adequately care for the child.

(Emphasis added).

In a hearing concerning the discontinuance of Badger Care, the burden of proof is upon the county agency to establish that it is more likely than not the recipient's assistance has been correctly discontinued. The petitioner then must rebut this showing with evidence that establishes he or she is eligible and the agency erred.

During the May 19, 2014 hearing and in her closing argument, ES Supervisor Amy Mayo asserted that petitioner did not establish with any reliable evidence that Mr. [REDACTED]'s cooperation would reasonably result in physical or emotional harm to the child or the petitioner per BadgerCare Plus Eligibility Handbook, sec. 5.34 and 5.35. Petitioner admitted that she does text with Mr. [REDACTED], and does have some limited contact with him. There was no evidence of any threat, actual harm or medical, therapist or social worker reports that confirm any abuse to the petitioner or the child. Ms. Mayo also argued that petitioner did not file for any restraining order. In her brief, Ms. Mayo also indicated that Mr. [REDACTED] has attended hearings regarding possible custody, placement or child support issues in the Oneida Court in the Paternity of B.M.R. in Case No. 14 PA 01.

Attorney [REDACTED] was a zealous advocate for the petitioner. She undermined some of the arguments by the county agency. However, she was unable to establish with any reliable, non-hearsay evidence that petitioner or her child were in physical or emotion danger from the petitioner pursuant to BadgerCare Plus Eligibility Handbook, sec. 5.3.5, "Evidence." Ms. [REDACTED] argued that she should be granted good cause claiming that emotional and/or physical harm was possible due to [REDACTED] [REDACTED] being violent and abusing drugs and alcohol. She stated that she lived with Mr. [REDACTED] during the spring of 2013, and that she saw him abuse drugs and alcohol and alleged that he was violent with her. She allegedly "fled" her residence with him, and her family packed up her belongings. However, petitioner had no Court record, police/ social worker reports, no doctor or therapist letter, that Mr. [REDACTED] might inflict physical or emotional harm on the petitioner or her child. In addition, petitioner did not have any hearing witnesses who could have testified about any actual physical or emotional abuse they witnessed. There may very well be issues to address with the Paternity action in [REDACTED]. However, petitioner's testimony and written good cause claim were insufficient to meet her burden of proof to establish with reliable evidence the likely emotion or physical harm to herself or her child. Accordingly, based upon the above, I conclude that the county correctly denied the petitioner's October 3, 2013 Good Cause claim for not cooperating with the child support agency.

CONCLUSIONS OF LAW

The county correctly denied the petitioner's October 3, 2013 Good Cause claim for not cooperating with the child support agency.

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 1st day of August, 2014

\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 August 1, 2014.

Oneida County Department of Social Services
Division of Health Care Access and Accountability
Attorney [REDACTED] [REDACTED]