FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

REHEARING
DECISION

BCS/157245

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Sauk County Department of Human Services in regard to Medical Assistance, a rehearing was held on July 15, 2014, at Baraboo, Wisconsin. The petitioner did not appear for his May 21, 2014 hearing, and that appeal was dismissed as abandoned. The petitioner submitted a rehearing request, and that rehearing request was granted for good cause.

The issue for determination is whether the county agency correctly removed the petitioner from his wife's BadgerCare (BC) household effective May 1, 2014, due to petitioner no longer residing with his wife in her BC household as of about March 2, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Susan Williamson, ESS
Sauk County Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Sauk County who resided in the past with his wife, [redacted], and their two children.

2. There is a divorce case and child custody case between petitioner and [redacted] in Sauk County Circuit Court No. [redacted]. The hearing record is unclear if the divorce has been finalized by the Circuit Court.

3. [redacted] was the casehead for the BadgerCare (BC household) located at [redacted], which included her husband, [redacted], and their two children.

4. On or about March 2, 2014, petitioner left his home because [redacted] verbally insulted him in front of his children.

5. On or about March 31, 2014, [redacted] contacted the county agency and requested for her husband (petitioner) to be removed from her BC household, as he had allegedly gone to live with his girlfriend.

6. Between March 2, 2014 and June 8, 2014, petitioner resided with his parents at their home.

7. The county agency sent an April 1, 2014 Notice of Decision to the petitioner stating that [redacted] was removed from her BC household effective May 1, 2014, due to her husband no longer residing with [redacted] in her BC household. See Exhibit 1.

8. During an April 14, 2014 conversation with [redacted], the county representative suggested to petitioner that he may want to apply on his own for BadgerCare benefits.

9. On May 14, 2014, [redacted] contacted the county agency to indicate that she was not getting back together with her husband, and instead would be moved to Jefferson County on or about June 8, 2014.

10. The petitioner did not return to reside in his home at [redacted], until June 8, 2014 (after [redacted] moved out of the house).

11. The petitioner was unable to establish with any reliable evidence that he resided in the petitioner's BC household after March, 2014.

DISCUSSION

During the July 15, 2014 rehearing, the county agency representative, ESS Susan Williamson, presented convincing testimony and evidence to establish that it correctly removed the petitioner from his wife's BadgerCare (BC) household effective May 1, 2014, due to petitioner no longer residing with his wife in her BC household as of about March 2, 2014. Ms. Williamson correctly asserted that petitioner was not "temporarily absent" from his wife's BC household, as Mr. [redacted] admitted that he left [redacted]'s BC household as of about March 2, 2014, and did not return to that home until June 8, 2014 (after [redacted] had left the home with her two children for her new residence in Jefferson County), and [redacted] confirmed with the agency that she was not getting back together with [redacted]. The agency established that because [redacted] was the BC casehead then petitioner had to be residing in the same household with his wife to continue to be included in her BC household. The hearing record is clear that [redacted] requested that petitioner be removed from her household as of March 31, 2014, and the agency correctly removed Mr. [redacted] from her BC household as of May 1, 2014.

During the hearing, petitioner, his mother and his sister all testified that [redacted] was verbally abusive and nasty to [redacted]. They all explained that due to that verbal abuse, [redacted] decided on March 2, 2014 to leave their home because [redacted] insulted him in front of their two children. However, in this case, the only issue to be addressed is whether the county agency correctly removed petitioner from his wife's BC household because he was no longer residing with her in her BC household and was not temporarily absent. See above Findings of Fact. Petitioner was unable to provide any reliable evidence to refute the county agency's case that it correctly removed him from [redacted]'s BC household. Accordingly, based upon the above, I must conclude that the county agency correctly removed the petitioner from his wife's BadgerCare (BC) household effective May 1, 2014, due to petitioner no longer residing with his wife in her BC household as of about March 2, 2014.

As dicta, the petitioner certainly may want to apply for BC benefits on his own, if he has not already done so.

CONCLUSIONS OF LAW

The county agency correctly removed the petitioner from his wife's BadgerCare (BC) household effective May 1, 2014, due to petitioner no longer residing with his wife in her BC household as of about March 2, 2014.

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 25th day of July, 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 July 25, 2014.

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