



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/159728

PRELIMINARY RECITALS

Pursuant to a petition filed August 09, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on September 04, 2014. The record was held open to allow time for petitioner to submit additional information, which was received.

The issue for determination is whether the agency correctly seeks to terminate petitioner's MA due to a failure to cooperate with the Child Support Agency (CSA).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Kathy Jones
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waukesha County.
2. On February 5, 2014 petitioner had a baby.
3. On or about February 10, 2014 the agency requested information about the baby's paternity.

4. On March 12, 2014 the petitioner filed a Good Cause Claim to be exempt from cooperation with the CSA.
5. On June 27, 2014 the agency issued a denial of petitioner's GCC.
6. On July 9, 2014 petitioner filed a report with the Walworth County Sheriff's Office alleging that the purported father of her baby had sexually assaulted her causing the pregnancy.
7. On July 28, 2014 the agency issued a notice to petitioner stating that effective September 1, 2014 petitioner's MA would end due to noncooperation with the CSA.

DISCUSSION

BadgerCare Plus (BCP) is an expansion of the Wisconsin MA program meant to provide insurance for children under 19 and their parents. See Wis. Stat. §49.471 and *BadgerCare Plus Eligibility Handbook (BCPEH)*, §1.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

In order to qualify for BCP, an individual must meet certain financial and nonfinancial criteria. In the instant case, the agency determined that the Petitioner was not eligible for BCP as she did not meet the BCP nonfinancial eligibility requirement that requires she cooperate with the child support agency in paternity establishment. The BCP authorizing statute does not discuss paternity cooperation as a condition of eligibility. The paternity establishment/child support statute does cross-reference §49.471, and requires that any person receiving BCP must cooperate (unless she identifies good cause for noncompliance) by "making a good faith effort to provide [requested, necessary] information within 7 days after receiving a request under this paragraph." Wis. Stat. §49.22(2m)(a).

The BCPEH policy instructions in this matter are as follows:

5.2.1:

Unless the person is exempt or has *good cause* for refusal to cooperate (see 5.3), each *applicant*/member that is referred, must, as a condition of eligibility, cooperate in:

1. Establishing the paternity of any child born out of wedlock for whom BC+ is requested or received, and
2. Obtaining medical support for the applicant and for any child for whom BC+ is requested or received.

Cooperation includes any relevant and necessary action to achieve the above. As a part of cooperation, the applicant may be required to:

1. Provide verbal or written information known to, possessed by, or reasonably obtainable by the applicant.
2. Appear as a witness at judicial or other hearings or proceedings.
3. Provide information, or attest to the lack of information, under penalty of perjury.
4. Pay to the CSA any court ordered medical support payments received directly from the absent parent after support has been assigned.
5. Attend office appointments as well as hearings and scheduled genetic tests.

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5.3.1:

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 requirements in 5.3.5.

5.3.4 Circumstances

The IM agency must determine whether or not cooperation is against the best interests 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, or
2. At least one of the following circumstances exists and it is reasonably anticipated that proceeding to establish paternity or secure support or both would be detrimental to the child:
 - a. The child was conceived as a result of incest or sexual assault, or
 - b. A petition for the child's adoption has been filed with a court, or
 - c. The parent or caretaker is being assisted by a public or private social agency in deciding whether or not to terminate parental rights and this has not gone on for more than three months.

5.3.5 Evidence

An initial good cause claim may be based only on evidence in existence at the time of the claim. There is no limit to the age of the evidence. Once a final determination is made, including any Fair Hearing decision, any subsequent claim must be based on new evidence.

The following may be used as evidence:

1. Birth certificates or medical or law enforcement records that indicate that the child may have been conceived as a result of incest or sexual assault.
2. Court documents or other records which indicate that a petition for the adoption of the child has been filed with a court.
3. Court, medical, criminal, child protective services, social services, psychological school, or law enforcement records which indicate that the alleged father or absent parent might inflict physical or emotional harm on the member or the child.
4. Medical records which give the emotional health history and present emotional health status of the member or the child.
5. A written statement from a mental health professional indicating a diagnosis of or prognosis on the emotional health of the member or the child.
6. A written statement from a public or private social agency that the agency is assisting the parent to decide whether or not to terminate parental rights.

- 7. A sworn statement from someone other than the member with knowledge of the circumstance on which the claim is based.
- 8. Any other supporting or corroborative evidence.

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Petitioner’s testimony was that she believed the father in question was unsafe for her and the child. Petitioner presented the father’s records from the Public Records of the Wisconsin Circuit Courts (commonly known as CCAP) which included records to show he was found guilty of a class A misdemeanor for the charge of Sex with Child Age 16 or Older. Petitioner also explained that her pregnancy in question was the result of a sexual assault he perpetrated on her. She provided the police reports to show that she had filed the report about the assault. No other information was provided to show that Petitioner was being less than honest or being otherwise uncooperative. Because the policy states that cooperation can be waived if the child was conceived as a result of sexual assault and given the corroborating information about this man, I do not find that the agency has supported or rebutted a finding that Petitioner was uncooperative.

CONCLUSIONS OF LAW

The agency incorrectly seeks to terminate the Petitioner’s BC+ due to noncooperation with the CSA.

THEREFORE, it is ORDERED

The matter is remanded to the agency to take the administrative steps necessary to remove the child support sanction, redetermine petitioner’s eligibility for MA from September 1, 2014 forward, and to issue a notice of decision regarding same. Because the agency may require verifications to redetermine benefits, I am ordering that these actions shall be taken within thirty (30) days of the date of this decision. If no verifications are necessary, the actions shall be taken within ten (10) days of the date of this decision.

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 Milwaukee,
Wisconsin, this 30th day of October, 2014

\sKelly Cochrane
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 30, 2014.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability