



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

BCS/161196

PRELIMINARY RECITALS

Pursuant to a petition filed October 13, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on October 29, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has taken a negative action against the petitioner's BCP case as of the date of hearing.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Simone Johnson, IM Spec. Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact ) is a resident of Milwaukee County.
2. The petitioner has an ongoing BCP case as a household of two persons, himself and his 17-year old daughter. The petitioner has full custody and placement of the daughter. He has established

this fact to the agency's satisfaction in the past with court documents. The child's mother has no legal custody of the child.

3. On October 6, 2014, a meddlesome relative reported to the local agency that the daughter was not in the petitioner's household. In response to that report, the agency mailed a residence verification request regarding the daughter's status to the petitioner on October 8, 2014. The agency then prematurely mailed a notice on October 13, advising the petitioner that it would close his BCP case effective November 1, 2014.
4. The petitioner filed a fair hearing request in response to the verification request. In preparing for hearing, the agency noted that he has verified his custody and placement of the child in the past. Accordingly, the agency did not proceed further, and did not reduce his BCP household size or discontinue that benefit.
5. The petitioner's daughter was physically with him through September 17, 2014. She has a pattern of running away and returning to the petitioner.

### DISCUSSION

An Administrative Law Judge has jurisdiction to direct agency action pursuant to a hearing request after the agency has taken a negative action against the recipient. A negative action is denial of an application or prior authorization, reduction of benefits, or closure of a case. 42 C.F.R. § 431.201. The agency had done none of these negative things by the time of the hearing. The agency was satisfied with the evidence in Mr. Red...'s favor shortly after the verification request was made, and at the time of hearing. Thus, no negative action is planned, and I have no jurisdiction to order the agency to "undo" a non-existent negative action.

This decision does not preclude the agency from re-examining the household size if it receives a report that the petitioner's daughter has not returned to his household within six months after her September 17 departure. See, *BadgerCare Plus Eligibility Handbook*, § 2.4.2.

If the petitioner should feel the need to file a hearing request in the future, he is reminded that he may make a request on his hearing request form/letter, that he be allowed to appear by telephone (if he so prefers), rather than appearing in person at the agency's Vliet Street office.

### CONCLUSIONS OF LAW

1. There was no negative action against the petitioner's case for this Judge to review at the time of the October 29, 2014, hearing.

**THEREFORE, it is**

**ORDERED**

That the petition is 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 5th day of December, 2014

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\sNancy J. Gagnon  
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 December 5, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability