



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/163154

PRELIMINARY RECITALS

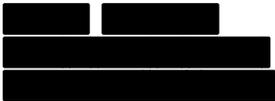
Pursuant to a petition filed January 13, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 29, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's minor children should be included in petitioner's BadgerCare Plus assistance group.

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: Jose Silvestre
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner and PH have two minor children, EL and KL. EL and KL were initially part of petitioner's FS household; pursuant to a decision in Division of Hearings and Appeals case no.

FOO/161891 (January 7, 2015), EL and KL were removed from petitioner's FS household and added to PH's FS household.

3. PH has physical placement of EL and KL at least 52.4% of the time.
4. On January 8, 2015, the respondent notified petitioner that EL and KL would be removed from his BadgerCare Plus assistance group effective February 1, 2015.
5. EL and KL were added to PH's BadgerCare Plus assistance group; petitioner's Medical Assistance benefits were not interrupted.
6. Petitioner appealed the removal of EL and KL from his BadgerCare Plus assistance group on January 13, 2015.

DISCUSSION

Petitioner argues that his minor children should have remained on his BadgerCare Plus case, and not moved to PH's BadgerCare Plus case. The respondent argues that the children are still receiving Medical Assistance benefits on PH's case, and that the petitioner's own Medical Assistance was uninterrupted. BadgerCare policy addressing this situation states that:

If both parents are applying for BC+ and claim the child is residing with them, act on their BC+ cases as follows:

1. If both parents agree that they have a reasonably equivalent placement arrangement, ask under which parent's case they want the child to be receiving BC+ benefits and determine eligibility for both parents' cases.
2. If either parent disputes that the placement arrangement is reasonably equivalent, the eligibility worker must determine the monthly percentage of the physical placement based on the court order. If the court order does not show reasonably equivalent placement, consider the child to be with the parent s/he is residing with during the month in question and deny the other parent's eligibility as a caretaker relative of this child.
- 3. If the parents can not agree on which case the child will receive benefits, put the child on the case with the family whose income is at the lower FPL level.**
4. Document your decision in the case record.

In determining eligibility for the parents with equivalent placement, the child is considered to be residing in both of their homes. That means the child will be included in the group size for both cases and the child's income will also be counted in both cases.

If reasonably equivalent placement exists (as described above) and both parents apply for BadgerCare Plus for the child and the child has access to health insurance where an employer pays 80% or more of the monthly premium in one home but not the other, the child shall remain eligible for BadgerCare Plus on the case with the parent who does not have access to health insurance for which the employer pays 80% or more.

<p>Example 1: Johnny, age 10, lives 50% of the time with his mom and 50% of the time with his dad. Both Johnny's dad and mom have applied for BadgerCare Plus. Mom is employed, but does not have access to health insurance coverage through her employer. Dad is employed and does have access to a family health insurance where his employer pays 81% of the monthly</p>

premium. Johnny can remain eligible on his mom's case.

If reasonably equivalent joint placement exists and both parents apply for BadgerCare Plus for the child and the income of either case requires that a premium be paid as condition of the child's BadgerCare Plus eligibility, then the parents can choose in which case the child will receive BadgerCare Plus coverage. A premium requirement in one case does not preclude eligibility in the other parent's case where no premium for the child would be owed.

Example 2: Billy, age 8, lives 40% of the time with his dad and 60% of the time with his mom. Both parents are applying for BadgerCare Plus. In his mother's case, the family income is 220% FPL and in his dad's case, the family income is 180% FPL. Johnny's parents decide that Johnny will be receiving his BadgerCare Plus coverage through Dad's case.

If joint placement exists with a parent who lives in another state, the child must be with the Wisconsin parent at least 50% of the time in a month to qualify for BC+.

BadgerCare + Eligibility Handbook § 2.2.1.2 (emphasis added).

It is clear that the petitioner and PH have not agreed on which case the children will receive benefits, and the record does not indicate which family, petitioner or PH, has income at the lower FPL level. As such this matter shall be remanded to the respondent to review and re-determine on which case the children will receive benefits. I realize that, practically speaking, this remand will not likely have any impact on the Medical Assistance eligibility of petitioner, EL or KL. However, the *Handbook* language is clear that, in the absence of agreement, the children should be placed with the family whose income is at the lower FPL level. The respondent has not established that it complied with this tenet.

CONCLUSIONS OF LAW

Petitioner and PH do not agree on which case the child will receive benefits. The respondent has not established that it reviewed and determined whether petitioner or PH has income at the lower FPL level.

NOW, THEREFORE, it is ORDERED

That this matter is hereby remanded to the respondent to review and re-determine on which case the children will receive benefits in accordance with *BadgerCare + Eligibility Handbook* § 2.2.1.2. All actions required by this Order shall be completed within 10 days following issuance of this Decision.

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 3rd day of March, 2015

\sPeter McCombs
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 March 3, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability