



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: BCS - 171402

PRELIMINARY RECITALS

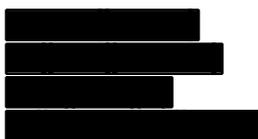
Pursuant to a petition filed on January 15, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance, a hearing was held on July 14, 2016, by telephone. Four previously scheduled hearings were rescheduled at petitioner's request.

The issue for determination is whether the county agency correctly denied petitioner's Medical Assistance application because he did not meet the necessary immigration status in order to be eligible for BadgerCare Plus.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County. See Exhibit 1.
2. The petitioner is a lawfully admitted temporary resident of the United States. See Exhibit 13.
3. The petitioner applied for Medical Assistance (MA) on November 24, 2015.
4. The respondent sent a notice to petitioner on December 2, 2015 indicating that his application for Medicaid/BadgerCare was denied because he was not a U.S. citizen or a qualified alien, and because his household income exceeds program limits. See Exhibit 5.

DISCUSSION

To receive MA, a person must be both nonfinancially and financially eligible for the program. The financial criteria consist of asset and income limits. To be nonfinancially eligible, a person must fit into any one of several nonfinancial eligibility categories, as listed in the state and federal statutes.

One of the nonfinancial requirements for MA is that a person must be a citizen or qualified alien. 42 C.F.R. §435.406(a). A qualified alien includes a person who is lawfully admitted for residence under the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.* 8. U.S.C. § 1641(b). The petitioner is *not* such a qualified alien. The federal law goes on to bar a qualified alien from receipt of non-emergency MA for five years from entry as a qualified alien, unless s/he fits into one of several exceptions related to asylum and veterans. The petitioner does not fit within any of the exceptions.

The BC+ Handbook states, in pertinent part, as follows:

4.3 IMMIGRANTS

Immigrants are persons who reside in the U.S, but are not U.S. citizens or nationals. The immigrants described below, who apply for BC+ and meet all eligibility requirements, are entitled to receive BC+ benefits.

...

**Lawfully admitted for permanent residence under the INA. 8 USC 1101 *et seq.*

...

**If these immigrants lawfully entered the U.S. on or after August 22, 1996, they must also be one of the following:

- a. Lawfully residing in Wisconsin and an honorably discharged veteran of the U.S. Armed Forces, or
- b. Lawfully residing in Wisconsin and on active duty (other than active duty for training) in the U.S. Armed Forces, or
- c. Lawfully residing in Wisconsin and the spouse, unmarried dependent child, or surviving spouse of a person described in "a" or "b" or
- d. An Amerasian.
- e. Resided in the U.S. for at least five years since his/her date of entry.

Immigrants, who do not appear in the lists above, who apply for BC+ and meet all eligibility requirements except for citizenship are entitled to receive BC+ Emergency Services only (Chapter 39).

Pregnant immigrants who do not appear in the list above, who apply for the BC+ Prenatal Program (BC+PP) (Chapter 41) and who meet the eligibility requirements except for citizenship are entitled to receive those benefits.

Immigration status is an individual eligibility requirement. It does not affect the eligibility of the BC+ Group. The citizen spouse or child of an ineligible immigrant may still be eligible even though the immigrant is not.

See also **Medicaid Eligibility Handbook, sec. 7.3.4.**

In this case, petitioner was unable to provide any reliable testimony or evidence to refute that petitioner has been determined to be a lawfully admitted, temporary immigrant. Petitioner argued that it was unfair that he has not been granted MAPP benefits. However, the respondent correctly denied the petitioner's application for MAPP because he is neither a U.S. citizen nor a qualified immigrant.

The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant him relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, he is not eligible; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

The respondent correctly denied petitioner's MA application because he does not qualify as a US citizen or qualifying immigrant.

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, **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 16th day of August, 2016

\s _____
Peter 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 August 16, 2016.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability