



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/173819

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2016, under Wis. Stat., §49.45(5)(a), to review a decision by Milwaukee Enrollment Services to discontinue Medical Assistance (MA), a hearing was held on May 18, 2016, at Milwaukee, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether the agency correctly discontinued MA when petitioner was incarcerated.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner received BadgerCare Plus (BC+) MA. In January, 2016 the agency received notice that petitioner was incarcerated.
3. By a notice dated January 18, 2016 the county informed petitioner that BC+ would end February 1, 2016 because of the incarceration.

### DISCUSSION

The Wisconsin Administrative Code, §DHS 103.03(6) provides as follows:

A person detained by legal process is not eligible for MA benefits. For purposes of this subsection, "detained by legal process" means incarcerated because of law violation or alleged law violation, which includes misdemeanors, felonies, and delinquent acts. A person who returns to the court after observation, is found not guilty of a law violation by reason of mental deficiency and is subsequently committed to a mental institution shall not be considered detained by legal process.

That provision is echoed in the BC+ Handbook, Appendix 3.6. There is an exception for individuals released under Huber privileges to care for family members, but no others.

The agency correctly closed petitioner's BC+ when it discovered he was incarcerated. He can reapply now that he is back in the community.

### CONCLUSIONS OF LAW

Petitioner was ineligible for BC+ when he was incarcerated.

**THEREFORE, it is** **ORDERED**

That the petition for review 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 24th day of May, 2016

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\sBrian C. Schneider  
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 May 24, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability