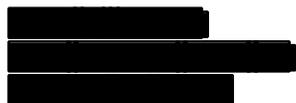




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: BCS - 174438

PRELIMINARY RECITALS

Pursuant to a petition filed on May 19, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marathon County Department of Social Services regarding Medical Assistance (MA). The hearing was held on June 14, 2016, by telephone.

The issue for determination is whether

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: 
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Marathon County.
2. Petitioner was enrolled in BC+.

3. Petitioner failed to cooperate with the child support agency. Petitioner filed a request for a finding of good cause for such non-cooperation. The basis of the request was the father's arrest record, the fact that he is currently incarcerated, and fear that the father could react in an undesired manner if child support is sought from him.
4. Petitioner has not been in contact with the father in the past 5 years.
5. The child support agency denied the good cause request.
6. Effective 6/1/16 the agency terminated BC+.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of the Medicaid program, for non-elderly, non-disabled Wisconsin residents. *BadgerCare Plus Eligibility Handbook (BEH)*, § 2.1. This program requires a person to cooperate in establishing the paternity of any child born out of wedlock for whom BC+ is requested or received. *BadgerCare Plus Eligibility Handbook (BEH)*, § 5.2.1. As part of cooperation, a person could be required to provide verbal or written information known to him or her, appear as a witness at hearings, provide information or attest to the lack of information under the penalty of perjury, pay to child support any court ordered medical support payments received directly from the absent parent, or attend office appointments or scheduled genetic tests. *Id.*

The only exception to this requirement that a person cooperate with the establishment of paternity is if there is good cause. *BadgerCare Plus Eligibility Handbook (BEH)*, § 5.3.1. Good cause consists of circumstances beyond a person's control that keep a person from following program requirements or specific eligibility conditions. *Id.* In determining good cause, the agency must look at whether cooperation is against the best interests of the child:

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 one of the following is true:

- The parent or caretaker's cooperation is reasonably anticipated to result in physical or emotional harm to one of the following:
 - **Child.** This means that the child is so emotionally impaired, that his or her normal functioning is substantially affected.
 - **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.
- 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:
 - o The child was conceived as a result of incest or sexual assault.
 - o A petition for the child's adoption has been filed with a court.
 - o 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.

BadgerCare Plus Eligibility Handbook (BEH), § 5.3.4. The agency can look at court records, medical records, a person's statements, and additional evidence in making this good cause determination. *BadgerCare Plus Eligibility Handbook (BEH)*, § 5.3.5.

In this case the only issue was whether the agency properly sanctioned Petitioner for failing to cooperate with the child support request by terminating the BC+. Upon receiving Petitioner's request for fair hearing, the agency mailed Petitioner the good cause paperwork. I agree with the agency that the fear of the father is not a reason to find good cause. A record of arrests, and the fact that he is presently incarcerated does not amount to reasonable anticipation of emotional or physical harm.

CONCLUSIONS OF LAW

Based upon the documents submitted and Petitioner's testimony, I find that the agency correctly determined Petitioner does not have good cause for failing to cooperate with child support to establish paternity.

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, **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 August, 2016

\s _____
John P. Tedesco
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 3, 2016.

Marathon County Department of Social Services
Division of Health Care Access and Accountability