



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/172027

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on April 06, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the petitioner’s appeal is timely.

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:

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES #) is a resident of Waukesha County.
2. On November 18, 2015 the agency sent the petitioner a notice stating that his BadgerCare (BC) Plus benefits “will be ending on December 1, 2015.” The notice went on to state inform the petitioner that his renewal had not been completed. If he “want[ed] to keep getting his [BC Plus

benefits, then he should] contact the agency before the end of this month.” The notice further stated that the petitioner had until January 18, 2016 to file a healthcare appeal.

3. On February 12, 2016 the Division of Hearings and Appeals received the petitioner’s Request for Fair Hearing.
4. The petitioner had a colonoscopy on December 1, 2015. He argues that given his notice, this procedure should be covered.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning MA is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d); Wis. Stat. § 49.45(5); Wis. Admin. Code § DHS 104.01(5)(a)3; Wis. Admin. Code § HA 3.05(3). A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

In this case the agency sent the petitioner a notice on November 18, 2015 stating that his MA/BC Plus benefits would be ending on December 1, 2015. The Division of Hearings and Appeals received the petitioner’s Request for Fair Hearing on February 12, 2016. This is well beyond the 45 day window for filing an appeal.

Even if I had jurisdiction, I would find against the petitioner. This petitioner is a well-educated, intelligent individual who has owned a business in the past, and currently owns his own home in Brookfield, WI. He received a notice stating that his healthcare benefits would be ending on December 1, 2015. This is the date on which his healthcare benefits ended. His healthcare benefits did not end the following day, but rather ended *on* the date listed in the notice, December 1, 2015. According to the Oxford English dictionary, *on* can be used to indicate the day or part of a day during which an event takes place. The dictionary uses the example, “reported on September 26.” Using this example reported on September 26, does not mean that it was reported on September 27.

It would be very convenient for the petitioner if his benefits ended on December 2, 2015, rather than December 1, 2015 as the notice informed him. The notice also told him to complete his renewal before the end of the month. He did not attempt to complete his renewal until December 3, 2015. At that time it became apparent that he was not going to be eligible for BC Plus benefits going forward. Had he done this renewal sooner, as the notice told him to do, he would have known prior to his colonoscopy. He also could have clarified whether he had coverage on December 1, 2015 or if his coverage was ending on December 1, 2015.

The petitioner argues that in November his provider verified that he had coverage. His provider did not receive the notice stating that his healthcare benefits would be ending on December 1, 2015. That notice was only sent to the petitioner. Having received that notice, he could have contacted the agency for clarification. He did not do that.

CONCLUSIONS OF LAW

The petitioner’s appeal is untimely, and I do not have jurisdiction to decide this case on the merits.

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 Milwaukee,
Wisconsin, this 16th day of May, 2016

\sCorinne Balter
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 16, 2016.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability