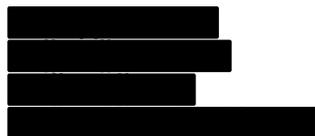




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/173561

PRELIMINARY RECITALS

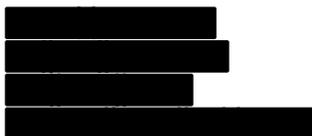
Pursuant to a petition filed April 05, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on May 05, 2016, at Sheboygan, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely and, if so, whether the agency is liable to reimburse the Petitioner for his monthly MA cost share paid from September, 2013 – May, 2015.

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:

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Sheboygan County.
2. Effective October 1, 2010, Petitioner was enrolled in Family Care and had a monthly cost share. At that time, the Petitioner was not working.

3. On December 5, 2011, the income maintenance agency (“the agency”) issued a Notice of Decision to the Petitioner informing him that he would continue enrollment in Family Care with a monthly cost share. The notice informed him that the determination was based on his monthly income from Social Security. The notice also informed the Petitioner of the requirement to report to the agency within 10 days of any change in household income.
4. On January 17, 2012, Petitioner started working at [REDACTED]. He was a permanent employee, paid bi-weekly. He worked an average of 11 hours/week.
5. On July 30, 2012 and July 16, 2013, the income maintenance agency issued renewal notices and summaries to the Petitioner. The notices informed the Petitioner of the requirement to complete a renewal in order to continue benefits. The Petitioner was asked to review the attached information and inform the agency of any changes. The information on the summary indicated that the Petitioner did not request MAPP benefits. The information further indicated that the Petitioner’s only income was from Social Security. The Petitioner was required to submit a signature page to the agency verifying the information.
6. On August 17, 2012 and September 3, 2013, the income maintenance agency issued notices to the Petitioner that his benefits would be discontinued due to failure to complete renewals. The Petitioner then completed the renewals and benefits were continued. In August, 2012, the Petitioner did not report a change in income from [REDACTED] employment.
7. In or about August, 2013, Petitioner’s employment with [REDACTED] was reported to the income maintenance agency.
8. Petitioner had a monthly cost share for Family Care from his enrollment date through May 31, 2015.
9. In or about September, 2015, the Petitioner requested MAP benefits.
10. On October 16, 2015, the agency issue Notice of Decision to the Petitioner informing him that he was enrolled in the Medicaid Purchase Plan (MAPP) effective November 1, 2015 with no monthly premium.
11. On October 21, 2015, the agency issued a Notice of Decision to the Petitioner informing him that he was enrolled in the Community Waivers program effective October 1, 2015 with no monthly premium.
12. On December 9, 2015, the agency issued a Notice of Decision to the Petitioner informing him that for the period of June 1, 2015 – August 31, 2015, he was enrolled in Community Waivers and MAPP with no monthly premium. The notice also informed the Petitioner of the right to a hearing on the agency’s determination by filing an appeal with the Division of Hearings and Appeals no later than January 25, 2016.
13. On December 15, 2015, the agency issued a Notice of Decision to the Petitioner informing him that for the period of September 1 – 30, 2015, he was enrolled in Community Waivers and MAPP with no monthly premium. The notice also informed the Petitioner of the right to a hearing on the agency’s determination by filing an appeal with the Division of Hearings and Appeals no later than February 1, 2016.
14. On April 5, 2016, an appeal was filed on behalf of the Petitioner.

DISCUSSION

An administrative law judge (ALJ) can rule on the merits only if jurisdiction is present under law to do so. There is no jurisdiction if the hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Medicaid benefits within 45 days of the effective date of the negative action. Wis. Stat. § 49.45(5); Income Maintenance Manual § 3.3.1.

In this case, the agency made determinations on December 9, 2015 and December 15, 2015 related to the Petitioner's request to back-date MAPP eligibility. The agency back-dated eligibility for MAPP based on a September, 2015 request for MAPP benefits made by the Petitioner's representative. Applicants for MAPP may be certified retroactively for eligibility up to three months prior to the application date if all eligibility criteria are met. MA Eligibility Handbook, § 26.2.1.

In this case, the result of certifying the Petitioner for eligibility retroactively to June, 2015 resulted in the Petitioner receiving a refund of the monthly cost share that he paid starting June, 2015 for Family Care. The Petitioner asserts that he was not previously informed that he was eligible for the MAPP program and that if he had been informed that he would be eligible, he would have applied earlier and would not have paid a monthly cost share for Family Care. He seeks to have MAPP certified back to 2012 and to get a refund of his monthly cost share back to 2012.

I conclude that the Petitioner's appeal is not timely. The agency made a determination on December 9, 2015 to back-date the Petitioner's MAPP eligibility to June, 2015. The notice of this determination informed the Petitioner of the right to appeal the determination by filing a hearing request no later than February 1, 2016. The Petitioner's appeal was filed April 5, 2016. Thus, it was untimely and no jurisdiction exists for DHA to rule on the merits of the case.

I note as dicta that DHA lacks the authority to grant the equitable relief sought by the Petitioner. See *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). The Petitioner asserts that it was the responsibility of the managed care organization (MCO) or the agency to inform him of his eligibility for the MAPP program. The MCO advocates for its members but does not have a duty under the law to tell enrollees which programs to apply for. The income maintenance agency determines eligibility for programs based on requests made by an individual to be tested for eligibility. In this case, there is conflicting testimony about whether the MCO informed the Petitioner that he may be eligible for MAPP with the MCO asserting that it did inform the Petitioner of the program and the Petitioner stating that he was aware of the program but not aware that he would have been eligible. I note that the MCO would not know if an individual is eligible for the program since the income maintenance agency determines eligibility. The income maintenance agency was not aware that the Petitioner was employed (a requirement for MAPP) until being informed in September, 2013 and there was no request made or application filed for MAPP by the Petitioner until September, 2015.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal 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 22nd day of June, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 22, 2016.

Sheboygan County Department of Human Services
Office of Family Care Expansion
Health Care Access and Accountability