



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
MQB- 174007

PRELIMINARY RECITALS

On April 29, 2016, the above petitioner filed a hearing request under Wis. Stats, § 49.45 to challenge a decision by the Waukesha County Health and Human Services regarding Medical Assistance. The hearing was held on May 26, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly denied the Petitioner's request for a backdate of MA eligibility to August, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services

[REDACTED]

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On November 7, 2015, the Petitioner submitted a request for healthcare benefits to the agency.
3. On November 19, 2015, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of any financial accounts and information regarding rental income. The due date for the information was December 7, 2015.
4. On December 7, 2015, the Petitioner reported to the agency that she had no financial accounts.
5. On December 8, 2015, the agency issued a Notice of Decision to the Petitioner denying her application for healthcare benefits due to failing to provide requested verifications regarding rental income. The Notice informed the Petitioner of the right to appeal the agency determination by filing a request for a hearing with the Division of Hearings and Appeals no later than January 25, 2016.
6. On December 15, 2015, the Petitioner submitted verification of rental income..
7. On December 16, 2015, the agency issued a Notice of Decision to the Petitioner informing her that she was eligible for BC+ benefits with no monthly premium effective November 1, 2015. The Notice informed the Petitioner of the right to appeal the agency determination by filing a request for a hearing with the Division of Hearings and Appeals no later than February 1, 2016.
8. On December 16, 2015, the agency obtained information that the Petitioner's social security check was being deposited into a checking account. The agency issued a Notice of Proof Needed to the Petitioner requesting verification of the account into which the Petitioner's social security income was deposited. The due date for the information was December 28, 2015.
9. On December 21, 2015, the Petitioner contacted the agency regarding the verification request.
10. On December 23, 2015, the Petitioner contacted the agency to inquire about backdating her eligibility.
11. On December 24, 2015, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of checking accounts. The due date for the information was January 6, 2016.
12. On January 7, 2016, the agency issued a Notice of Decision to the Petitioner informing her that she was enrolled in BC+ with no monthly premium effective February 1, 2016. The notice informed the Petitioner of the right to appeal the agency determination by filing a request for a hearing with the Division of Hearings and Appeals no later than March 18, 2016.
13. On January 11, 2016, the agency received verification of a checking account from the Petitioner.
14. On February 29, 2016, the agency issued a notice to the Petitioner that she was eligible to receive Medicare premium assistance via the SLMB program starting November 1, 2015. The notice informed her that her request for an appeal must be received within 45 days of the date of the agency action.
15. On April 29, 2015, the Petitioner filed a request for a hearing with the Division of Hearings and Appeals.

DISCUSSION

A hearing examiner cannot rule on the merits of a case if there is no jurisdiction to do so. There is no jurisdiction if an appeal is untimely. A request for a hearing concerning a negative action taken by an agency regarding MA benefits must be filed within 45 days of the agency action. Wis. Stats., § 49.45(5). A negative action may include denial or termination of MA benefits.

In this case, the Petitioner is appealing the agency determination to deny her request to backdate SLMB benefits to August 1, 2015. There was no agency action taken within 45 days prior to the Petitioner's request for a hearing. The appeal was filed 60 days after the agency action on February 29, 2016

approving SLMB benefits effective November 1, 2015. There is no jurisdiction for DHA to rule on the merits of the issue of SLMB backdating due to the Petitioner's appeal not being filed in a timely manner.

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, **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 6th day of July, 2016

\s _____
Debra Bursinger
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 July 6, 2016.

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