



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 174405

PRELIMINARY RECITALS

Pursuant to a petition filed on May 17, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Waukesha County Health and Human Services regarding Medical Assistance (MA). The hearing was held on July 19, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly discontinued the Petitioner's Family Care benefits during the period of March, 2016 – June, 2016 due to non-payment of cost share.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [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. He was enrolled in the Family Care program with Care Wisconsin.
2. Petitioner had a monthly cost share of \$1,462.60. His monthly room and board expense was \$817.
3. On November 1, 2015, Petitioner had an outstanding balance of \$2,279.80 with Care Wisconsin. On December 1, 2015, Petitioner had an outstanding balance of \$4,559.20 with Care Wisconsin.
4. In January, 2016, a payment of \$1,600 was made to Care Wisconsin and applied to Petitioner's November cost share and room and board.
5. On February 12, 2016, the agency issued a Notice of Decision to the Petitioner's guardian informing her that effective March 1, 2016, the Petitioner's Family Care benefits would end due to failure to pay monthly cost share. The notice also informed the Petitioner of the appeal deadline of April 18, 2016.
6. On March 1, 2016, Petitioner's outstanding balance for his monthly cost share was \$7,518.40. The agency disenrolled the Petitioner from Family Care effective March 1, 2016.
7. Payments were made to Care Wisconsin in March, April and May, 2016.
8. On May 17, 2016, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

An administrative law judge may only decide the merits of a case if there is jurisdiction to do so. There is no jurisdiction if an appeal is not filed in a timely manner. The FC fair hearing deadline is described in the state code as follows:

DHS 10.55 Fair hearing.

...

(3) REQUESTING A FAIR HEARING. *A client shall request a fair hearing within 45 days after receipt of notice of a decision in a contested matter, ... Receipt of notice is presumed within 5 days of the date the notice was mailed.* A client shall file his or her request for a fair hearing in writing with the division of hearings and appeals in the department of administration. A hearing request shall be considered filed on date of actual receipt by the division of hearings and appeals, or the date of the postmark, whichever is earlier.

Wis. Admin. Code §DHS 10.55(3). (emphasis added)

The agency issued a notice of decision on February 12, 2016 informing the Petitioner's guardian that the Petitioner would be disenrolled from Family Care effective March 1, 2016. There was no evidence regarding the date of receipt of the notice of decision but receipt is presumed within 5 days. Presuming receipt 5 days after the issuance would be February 17, 2016. Based on a presumed receipt date of February 17, 2016, the deadline for appeal was Saturday, April 2, 2016. Because the appeal deadline fell on a weekend, the appeal deadline would be extended to the following Monday, April 4, 2016. I note that the notice of decision issued by the agency indicated an incorrect appeal deadline of April 18, 2016. In any case, the Petitioner's appeal was not filed until May 17, 2016 which was beyond the appeal deadline. DHA therefore does not have jurisdiction and cannot rule on the merits of the case.

As dicta, even if DHA had jurisdiction over this matter, the Petitioner requested an equitable remedy which DHA does not have authority to grant. Specifically, the Petitioner's guardian does not dispute that there was an outstanding balance on the monthly cost share. The agency has the authority to disenroll a member for non-payment of the monthly cost share. DHA could not grant the equitable remedy sought by the Petitioner even if the appeal was timely filed.

CONCLUSIONS OF LAW

The Petitioner's appeal was not timely filed.

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 3rd day of August, 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 August 3, 2016.

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