



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: BCS - 175505

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 13, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on August 10, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly denied the Petitioner's application for healthcare benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

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

By: [REDACTED]  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 9, 2016, the Petitioner submitted an application for healthcare benefits to the agency. She reported that she was currently living with her mother. She also reported that her mother

claims the Petitioner as a tax dependent. Petitioner reported that she is currently enrolled in college and working 9 hours/week at \$10.50/hour.

3. The agency received an employment verification from the Petitioner's employer dated June 27, 2016 reporting that she started working on June 6, 2016, 40 hours/week at \$10.00/hour.
4. Petitioner's mother has pension/retirement income of \$127.07/month and Social Security income of \$1,334/month.
5. On May 12, 2016, the agency issued a Notice of Decision to the Petitioner informing her that her application was denied due to household income exceeding the program limit. The notice advised 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 June 27, 2016.
6. On July 13, 2016, the Petitioner filed a request for hearing with the Division of Hearings and Appeals.

### DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 65 days after the date of the action. Thus, her appeal was untimely, and no jurisdiction exists for considering the merits of the MA case.

As dicta, even if the Petitioner's appeal was timely, it appears the agency action in denying her request for being over the household income was correct. Because the Petitioner is a tax dependent of her mother, the agency is required to include the Petitioner's mother's income in determining MA eligibility.

### CONCLUSIONS OF LAW

The Petitioner's appeal was 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 30th day of September, 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 September 30, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability