



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]

DECISION

BCC/142423

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 19, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 05, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Mary Hartung  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to challenge a June 1, 2012 discontinuance of his BadgerCare+ Core plan benefits for lack of required case review.

3. Petitioner was informed of the review requirement by notice dated April 16, 2012 that was sent to him at the above address.
4. A Notice of Decision dated May 18, 2012 was sent to Petitioner that notice informed him of the June 1, 2012 BadgerCare+ Core discontinuance as well as appeal rights and the appeal deadline – July 17, 2012, a Tuesday. That Notice of Decision was sent to Petitioner at the above address.
5. Petitioner filed this hearing request by fax to the Division of Hearings and Appeals on July 19, 2012, a Thursday.

### **DISCUSSION**

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. *Wis. Stats.*, §49.45(5)(a).

Here Petitioner testified that he did not receive the review notice but concedes that he did receive the Notice of Decision informing him of the discontinuance of benefits.

This appeal was not filed within the time limit allowed by law and the Division of Hearings and Appeals is without authority to make a determination on the merits of this matter.

### **CONCLUSIONS OF LAW**

That the Division of Hearings and Appeals is without authority to make a determination on the merits of this appeal as Petitioner's appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 26th day of October, 2012

---

David D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals

c: Division of Health Care Access and Accountability, DHSDHADHCAA@Wisconsin.gov -  
DHSDHADHCAA@Wisconsin.gov  
DHSMILESFAIRHEARINGS@dhs.wisconsin.gov, DHSMILESFAIRHEARINGS@dhs.wisconsin.gov - Milw.  
Enrollment Services



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on October 26, 2012.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability