



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCC/142773

PRELIMINARY RECITALS

Pursuant to a petition filed July 31, 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 scheduled for October 2, 2012. Following petitioner's rescheduling request, a hearing was held on October 24, 2012, at Milwaukee, Wisconsin. With petitioner's consent, the record was held open for a period of 10 days post-hearing to allow respondent time to submit further documentation; said documentation was received on October 24, 2012, and marked as Exhibit 4.

The issue for determination is whether the petitioner's appeal of the June 1, 2012 discontinuance of his BadgerCare Core Plan benefits is timely.

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: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received BadgerCare (BC) Core Plan benefits for himself as a BC household of one.

2. Milwaukee Enrollment Services sent an April 16, 2012, notice to the petitioner at his correct address specifying that his BadgerCare (BC) Plus Core Plan renewal application must be completed by May 31, 2012, to avoid a gap or delay in his BC benefits and/or enrollment. See Exhibit 4.
3. On May 14, 2012, Milwaukee Enrollment Services set a renewal interview appointment for petitioner at 2:00 p.m. on May 24, 2012; that same date, petitioner was sent notice of the interview at his correct address. Exhibit 4.
4. Petitioner did not appear at the May 24, 2012 appointment. Exhibit 2
5. On May 18, 2012, Milwaukee Enrollment Services notified petitioner at his correct address that his BC benefits would end on June 1, 2012, due to failure to complete his BC renewal for continued benefits. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) by July 17, 2012. Exhibit 3.
6. The petitioner mailed a Request for Fair Hearing dated July 30, 2012, to the Division of Hearings and Appeals (DHA); this was received at DHA on July 31, 2012. Exhibit 1.
7. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the June 1, 2012, BC discontinuance prior to July 31, 2012.

DISCUSSION

An Administrative Law Judge (ALJ) 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 Medical Assistance (MA) must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0.** A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the June 1, 2012 discontinuance of petitioner's BadgerCare Core Plan due to failure to timely complete his required review. See Exhibit 1.

During the October 24, 2012, hearing, petitioner testified that he remembered receiving some paperwork regarding his case; as he recalled, he believed that the notice referenced his BC benefits terminating. He does not recall ever receiving notice of the interview. Petitioner confirmed his correct address at hearing; all of the notices specified in the Findings of Fact were sent to the petitioner at his correct address, and there is no evidence that those notices were returned to MES as undeliverable. The petitioner did not establish any problems with his mail delivery, though he noted that he is living with his parents. There was no evidence that anyone at MES attempted to prevent the petitioner from filing a timely appeal at DHA.

At hearing petitioner was unable to provide any valid reason or good cause for not filing an appeal with DHA during the 45 day period following June 1, 2012. Despite acknowledging receipt of a notice referencing the termination of his benefits, he did not pursue the matter until he contacted the respondent on July 26, 2012. Accordingly, I must conclude that because petitioner did not appeal the June 1, 2012 BC Core Plan discontinuance within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the June 1, 2012 BadgerCare discontinuance issue in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the May 1, 2012 discontinuance of petitioner's BadgerCare Core Plan benefits, as the appeal is untimely.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 Madison,
Wisconsin, this 31st day of October, 2012

Peter McCombs
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 October 31, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability