



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MGE/142774

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 26, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly terminated petitioner's MA when she has no minor child living in her home and she is not elderly, blind or disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and was a recipient of MA.
2. On May 15, 2012 petitioner applied for MA. On May 21, 2012 the agency processed that application and in error, found petitioner eligible for MA effective May 1, 2012.

3. At some point after that May 21, 2012 notice, the agency discovered its error in finding petitioner eligible for MA. On June 6, 2012 the agency sent a written notice to petitioner stating that effective July 1, 2012 her MA would end because there was no qualifying child under 19 in the household, petitioner is not age 65, legally blind, nor has she been determined disabled pursuant to federal Social Security disability regulations. Exhibit 2.
4. Petitioner is not caring for any minor, dependent children.
5. Petitioner is not age 65, legally blind, nor has she been determined disabled pursuant to federal Social Security disability regulations.

DISCUSSION

Medicaid (also called MA or Medical Assistance) is a federal-state medical assistance program for certain low-income individuals and is operated by state health or welfare agencies, under federal rules. MA benefits are extended to persons based upon categorical needy and medically needy eligibility. See Wis. Stat. §§49.46- 49.47. To be eligible as "categorically needy" an person must: (1) meet old AFDC eligibility requirements (be a caretaker of minor, deprived children); (2) receive or be eligible to receive federal Supplemental Security Income (SSI)(after being found disabled by the Social Security Administration); or (3) be verified as pregnant and meet specific income and asset limits. Wis. Stat. §49.46(1)(a).

Those not categorically eligible based upon the above factors may be eligible for MA based upon a "medically needy" determination. To be found "medically needy" a person must be one of the following: (1) 65 years of age or older; (2) under 18 years of age; (3) blind or totally and permanently disabled (as determined under Social Security guidelines); or (4) a woman who is verified as pregnant. In addition, a person must have income and assets below a certain level. See Wis. Stat. §49.47.

In this particular case, petitioner acknowledges that she does not meet any of the above eligibility criteria. She has not yet been determined disabled by the Social Security Administration nor the State of Wisconsin Disability Determination Bureau (DDB). Therefore, she is not currently eligible for MA benefits from the State. To be found disabled for MA purposes, she must be found disabled according to Social Security regulations. She did not meet the requirements at the time the agency made its original determination granting her MA in error, and did not meet the requirements after the error was discovered. Therefore, I must uphold the county's determination.

Petitioner can always reapply if her disability is approved through the DDB. I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

That petitioner is not entitled to MA as she is not legally blind, disabled for Social Security purposes, nor the caretaker of minor children.

THEREFORE, it is

ORDERED

That 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).

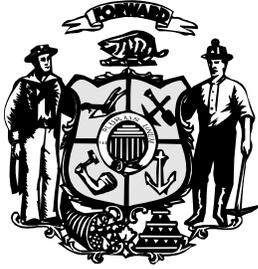
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, 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 27th day of September, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 27, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability