



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCC/142885

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on September 07, 2012, at La Crosse, Wisconsin.

The issue for determination is whether petitioner's request for hearing 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, Room 651
Madison, Wisconsin 53703

By: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. On February 13, 2012, the Department sent petitioner a notice that his periodic review for BadgerCare eligibility was required to be completed by March 31, 2012. The notice provided instructions and informed that failure to complete the review could impact enrollment. This notice was mailed to [REDACTED] which was the correct address for petitioner.

3. On March 19, 2012, the Department sent a notice to the same address warning that benefits would be ending on April 1, 2012 because the renewal had not been completed. The notice advised petitioner to contact the agency.
4. Petitioner filed a request for hearing on August 10, 2012.

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. See 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 131 days after the April 1, 2012 negative action terminating him from the BadgerCare Core Plan. Thus, it was untimely, and no jurisdiction exists for reviewing the action.

Petitioner claimed that he did not get the notice informing him of the termination, and, thus, could not have appealed timely. I cannot find that this is so. The Department mailed the two notices to petitioner at his residence. None of the notices was returned to the Department as undeliverable. He has a mailbox for his residence. He claimed that there have been other instances of mail theft – 4 or 5 times in the past year. He provided no corroboration for this claim. I simply find it hard to believe that both notices mailed to petitioner were stolen out of his mailbox. It is possible, but, the record in this case, and a mere possibility, does not overcome the presumption that mail properly addressed and mailed is properly delivered. I cannot find that petitioner did not get proper notice on this record.

Furthermore, petitioner explained that he learned that his benefits had been discontinued when he visited Gunderson Lutheran to get blood work done in the second week of April and they told him he was no longer enrolled in Badgercare. Assuming that he did not get any of the written notices, he still had actual notice by mid-April. With the April 1 termination, the deadline for filing an appeal was not until the middle of May. Petitioner had a full month to figure out the problem by contacting his worker. But, petitioner did not file his appeal in this case until August 10, 2012. He testified that he did not file the appeal sooner because he had a busy summer and was teaching summer school. His mother continued to “needle” him to resolve the issue and that he has “a tendency to procrastinate.” Had he filed his appeal when he learned of the discontinuance it would have been timely.

CONCLUSIONS OF LAW

This 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, 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 Madison,
Wisconsin, this 10th day of October, 2012

John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 10, 2012.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability