



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CTS/143337

PRELIMINARY RECITALS

Pursuant to a petition filed August 22, 2012, under Wis. Stat. § 227.42, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on November 07, 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: Alma Lezama, HSPC Sr.
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 18, 2011, Milwaukee Enrollment Services (MILES) sent Petitioner a notice of adverse action, indicating that her Caretaker Supplement benefit would be ending on August 1, 2011, because she failed to co-operate with child support enforcement. (Exhibit 6)

3. On November 28, 2011, Petitioner applied for Caretaker Supplement Benefits. On November 29, 2011, the agency sent Petitioner a notice of adverse action indicating that her application was denied because she had not co-operated with child support enforcement. (Exhibit 7)
4. On January 25, 2012, Petitioner applied for Caretaker Supplement Benefits. On February 13, 2012, the agency sent Petitioner a notice of adverse action indicating that her application was denied because she had not co-operated with child support enforcement. (Exhibit 8)
5. On June 15, 2012, Petitioner once again applied for Caretaker Supplement Benefits. On June 29, 2012, the agency sent a written notice of negative action to the petitioner, indicating that her application was denied because she had not co-operated with child support enforcement. (Exhibit 9)
6. On August 8, 2012, Petitioner again filed an application for Caretaker Supplement Benefits. On August 9, 2012, the agency sent Petitioner a notice indicating that she was approved for benefits, effective August 2012.
7. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on August 22, 2012.

DISCUSSION

In the case at hand, Petitioner seeks to have her benefits back dated to August 2011, asserting that her benefits were wrongly terminated and that her subsequent applications for benefits in November 2011, January 2012 and June 2012 were incorrectly denied, because she has always been in compliance with child support enforcement.

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 the Department, or its agents, concerning SSI/Caretaker Supplement benefits must be filed within 45 days of the date of the action. *SSI Caretaker Supplement Handbook §4.7* see also Wis. Admin. Code DHS §2.06. A negative action can be benefit denial, reduction, termination or recoupment/overpayment.

The termination of Petitioner's Caretaker Supplement Benefits was effective August 1, 2011. To dispute this, Petitioner needed to file an appeal within 45 days, which would have been September 16, 2012. Petitioner did not file an appeal until a year had passed. As such, her appeal of the termination of her Caretaker Supplement Benefits is untimely and the Division has no jurisdiction to hear the merits of her case.

Petitioner's November 2012 application for benefits was denied on November 29, 2011. If she wanted to appeal this, her appeal needed to be filed by January 16, 2012. She did not file her appeal until August 22, 2012, nine months after the denial. As such, her appeal is untimely and the Division has no jurisdiction to hear the merits of Petitioner's dispute.

Petitioner's January 2012 application for benefits was denied on February 13, 2012. If Petitioner wanted to appeal this denial, her appeal needed to be filed by March 30, 2012. She did not file her appeal until August 22, 2012, six months after the denial. As such, her appeal is untimely and the Division has no jurisdiction to hear the merits of Petitioner's dispute.

Petitioner's June 2012 application for benefits was denied on June 29, 2012. If Petitioner wanted to appeal this denial, she needed to do so by August 14, 2012. Petitioner did not file her appeal until August 22, 2012, 53 days after the date of adverse action. As such, her appeal is untimely and the Division has no jurisdiction to hear the merits of Petitioner's dispute.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition 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 served and 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 19th day of November, 2012.

/sMayumi M. Ishii
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 November 19, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability