



FH  
[REDACTED]

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

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In the Matter of:

[REDACTED]

DECISION

BCC/143480

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 27, 2012, under Wis. Stat. § 49.45(5) (2009-10), to review a decision by the Northern IM Consortium ["Consortium"] in regard to Badger Care Plus Medical Assistance Core Plan ["MA Core"], a Hearing was held via telephone on October 25, 2012. At petitioner's request a Hearing scheduled for September 25, 2012 was rescheduled.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction in this matter.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Wisconsin Department of Health Services  
Room 650  
1 West Wilson Street  
P.O. Box 7850  
Madison, Wisconsin 53707-7850

BY: Beulah Garcia, ESS, Resolution Coordinator  
Northern IM Consortium  
Sawyer County Health & Human Services  
Sawyer County Courthouse  
Suite 224  
10610 Main  
Hayward, Wisconsin 54843

## OTHER PERSON PRESENT:

■■■■■■, petitioner's friend

## ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ■■■■■■) is a resident of Wisconsin.
2. Petitioner received a letter notice dated March 19, 2012 and entitled *About Your Benefits*; that notice informed him that his enrollment in MA Core would end on April 1, 2012; the notice also informed petitioner of his appeal rights and of the process for requesting a Hearing, including the 45-day time limit for requesting a Hearing.
3. Petitioner did not request a Hearing concerning the April 1, 2012 ending of his MA Core until August 27, 2012; his request for a Hearing was made by way of a *Request For Fair Hearing* form dated August 25, 2012, postmarked August 27, 2012, and received by DHA via U.S. Mail on August 29, 2012.

**DISCUSSION**

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning MA Core is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d) (2011); Wis. Stat. § 49.45(5) (2009-10); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (September 2001); *BadgerCare Plus Eligibility Handbook* 29.2.; *Income Maintenance Manual* ["IMM"] 3.3.2. A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (September 2001).

In this case, the action being appealed is the April 1, 2012 ending of petitioner's MA Core. Petitioner's request for a Hearing was not filed until August 27, 2012. See, Wis. Admin. Code §§ HA 3.05(2)(a) & 3.05(3)(c) (September 2001). This is well outside of the allowable 45 days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.<sup>1</sup>

Petitioner testified that he did not ask for a Hearing sooner because he "thought it was going to get worked - out." This is unfortunate, but it does not create jurisdiction where none otherwise exists. Petitioner's friend testified that petitioner "does not know how the system works." However, the March 19, 2012 *About Your Benefits* notice informed petitioner of his appeal rights and of the process for requesting a Hearing, including the 45-day time limit for requesting a Hearing.

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<sup>1</sup> Computer *Case Comments* indicate that petitioner might have asked for a Hearing orally on June 13, 2012. However, June 13, 2012 is still well outside of the allowable 45 days.

**CONCLUSIONS OF LAW**

For the reasons discussed above, DHA does not have jurisdiction in this matter.

**NOW, 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, 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 30th day of October, 2012

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Sean P. Maloney  
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 30, 2012.

Vilas County Department of Social Services  
Division of Health Care Access and Accountability