



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]

DECISION

BCC/143489

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 2012, under Wis. Stat. § 49.45(5) (2009-10), to review a decision by the Milwaukee County Department of Health and human Services ["County"] in regard to Badger Care Plus Medical Assistance Core Plan ["MA Core"], a Hearing was held via telephone on October 16, 2012.

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: Belinda Bridges, Income Maintenance ["IM"] Specialist, Advanced
Milwaukee County Department of Health and human Services
1220 West Vliet Street
Milwaukee, Wisconsin 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. Petitioner received a letter notice dated May 18, 2012 and entitled *About Your Benefits*; the notice informed her that her enrollment in MA Core would end on June 1, 2012; the notice also informed petitioner of her appeal rights and of the process for requesting a Hearing, including the 45-day time limit for requesting a Hearing.
3. Petitioner received a letter notice dated June 4, 2012 and entitled *About Your Benefits*; the notice informed her that her enrollment in MA Core would end on June 1, 2012; the notice also informed petitioner of her appeal rights and of the process for requesting a Hearing, including the 45-day time limit for requesting a Hearing.
4. Petitioner did not request a Hearing concerning the June 1, 2012 ending of her MA Core until August 27, 2012; her request for a Hearing was made by way of a letter dated August 27, 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 petitioner's June 1, 2012 ending of MA Core. Petitioner's request for a Hearing was not filed until August 27, 2021. 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.

Petitioner testified that she does not remember getting the May 18, 2012 *About Your Benefits* notice. She also testified that she does not remember getting the June 4, 2012 *About Your Benefits* notice. She testified that she does not know why she would not have gotten the notices. However, both notices were correctly addressed. Therefore, it must be concluded that petitioner received them (although she might not remember receiving them).

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 23rd day of October, 2012

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 23, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability