



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/143574

PRELIMINARY RECITALS

Pursuant to a petition filed August 30, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on December 06, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether there is jurisdiction to review the merits of Petitioner's appeal.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Sharon Thacker, 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 June 11, 2012, Milwaukee Enrollment Services (the agency) sent Petitioner a notice indicating that as of July 1, 2012, she would need to pay a premium of \$162.00 to continue to receive BadgerCare+ benefits. The notice further indicated that if Petitioner failed to pay the premium, her BadgerCare+ benefits would end. (Exhibit 6, pgs. 31-36)

3. On June 22, 2012, the agency sent Petitioner a notice indicating that as of August 1, 2012, she would need to pay a premium of \$121.00 and that if she failed to pay the premium her BadgerCare+ benefits would end. (Exhibit 6, pgs. 37-43)
4. On August 10, 2012, Petitioner made a payment of \$121.00 which was applied to the premium due July 1, 2012. On August 16, 2012, Petitioner contacted the agency and complained because she did not believe she needed to pay premium for July 2012. (Exhibit 6, pg. 4 and pg. 49)
5. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 30, 2012. (Exhibit 1)
6. Petitioner has not had a lapse in benefits and has since paid premiums that the agency applied to September 2012, October 2012, and November 2012. (Testimony of Ms. Thacker; Exhibit 49)

DISCUSSION

Petitioner filed an appeal, asserting that she should not have to pay a premium for July 2012, because someone from the agency told her she did not have to pay a premium for July 2012. However, 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. Wisconsin Stat. § 49.45(5); Income Maintenance Manual §3.3.1. A negative action can be the denial of an application, the reduction or termination of an ongoing case, or as in this case, the imposition of a premium.

The effective date of the negative action was July 1, 2012. Consequently, Petitioner had 45 days from July 1, 2012, to appeal the imposition of the premium. The notice sent to Petitioner advising her of the need to pay a premium for July 2012 clearly stated that her appeal needed to be filed by August 16, 2012. The Petitioner's appeal was filed on August 30, 2012, two weeks after the appeal deadline and 60 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

There is no jurisdiction to review the merits of Petitioner's appeal.

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 11th day of December, 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 December 11, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability