



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MGE/144043

PRELIMINARY RECITALS

Pursuant to a petition filed September 20, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Juneau County Department of Human Services in regard to Medical Assistance, a hearing was held on November 16, 2012, at Mauston, Wisconsin.

The issue for determination is whether the Department erred in terminating petitioner's enrollment in EBD-Medicaid due to petitioner's failure to provide verification as requested by the Department in its August 29, 2012 Notice of Proof Needed.

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: April Lee

Juneau County Department of Human Services
Courthouse Annex
220 E. LaCrosse Street
Mauston, WI 53948

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Juneau County.

2. Petitioner was enrolled in the EBD-Medicaid program. During a review, the Department sought additional documentation relating to assets, expenses, and a pension. A Notice of Proof Needed was mailed to petitioner on August 29, 2012. The notice required that the documents be submitted on the due date of September 7, 2012.
3. Petitioner did not submit all of what was requested by September 7.
4. The Department terminated petitioner's enrollment effective October 1, 2012.
5. Petitioner filed a timely appeal.

DISCUSSION

The Medicaid Eligibility Handbook (MEH) provides directives to county agencies which set forth the agency and client responsibilities when processing an MA application or review. Applicants must verify financial information including assets. Wis. Admin. Code § HFS 102.03(3), MEH § 20.3.5. After reviewing petitioner's application the county agency requested verification of a checking account, a mortgage, and a pension by Notice of Proof Needed sent to petitioner on August 29, 2012. The Department specified that this information was to be provided by September 7, 2012.

The Department's own manual states that the Department agent must provide a minimum of ten days for a member to respond to a request for verification. MEH § 20.7.1. That did not happen here. The notice requesting the account information was issued on August 29. There is no indication in the record as to when it was received by petitioner. But, even using the issuance date, the Department only provided nine days until September 7 for the required response. In counting time for this purpose, one does not begin counting on the date of issuance. The counting must begin one day "after" the triggering event. See, e.g. Wis. Stat. § 801.15 ("the day of the act, event or default from which the designated period of time begins to run shall not be included"); see also Federal Rules of Civil Procedure Rule 6. So, the first day counted is the 30th of August. The day of the deadline was the 7th of September which was the 9th day after the date the notice was printed. The notice was invalid on its face and the action was error because it was based on a flawed notice.

I also note that I am seeing cases just like this one with some frequency. The MEH states that the agency must "**[g]ive the applicant a minimum of ten calendar days to provide any necessary verification.**" MEH § 20.7.1. Common sense dictates that the member does not receive the notice on the day it is printed. So, this provision really calls for allowing ten days from the reasonable date of petitioner's receipt of any request for verification. It may be that the Department's computer programs calculate this date on the notices. If that is the case, they ought to be reprogrammed as they do not appear to be calculating dates in conformance with the Department's program rules.

CONCLUSIONS OF LAW

The August 29, 2012 Notice of Proof Needed was invalid on its face and the action terminating benefits effective October 1, 2012 was error.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent with instructions to reverse the termination and reinstate enrollment retroactive to October 1, 2012. These actions must be completed within 10 days.

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 Madison,
Wisconsin, this 12th day of December, 2012

\sJohn P. Tedesco
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 12, 2012.

Juneau County Department of Human Services
Division of Health Care Access and Accountability