



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCC/144075

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 24, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on November 02, 2012, at Madison, Wisconsin.

The issue for determination is whether the petitioner's Request for Fair Hearing is timely.

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: Antonio Esterrich

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County who received BadgerCare (BC) Core Plan benefits from approximately July, 2009 through August, 2010.
2. Respondent confirmed with the Immigration and Naturalization Service that petitioner was designated a lawfully admitted permanent resident on November 30, 2005.

3. On July 23, 2010, respondent issued a written notice to petitioner indicating that her BC benefits would terminate as of September 1, 2010, since petitioner was not a U.S. citizen or an immigrant eligible to receive this benefit. The Notice further indicated that if petitioner sought to appeal this determination, the deadline to do so was October 18, 2010.
4. Petitioner applied for BC benefits on November 23, 2010. On November 24, 2010, respondent issued a written notice to petitioner indicating that her BC benefits were denied since petitioner did not meet non-financial program requirements. The Notice further indicated that if petitioner sought to appeal this determination, the deadline to do so was January 10, 2011.
5. On or about September 24, 2012, petitioner submitted a Request for Fair Hearing to the Division of Hearings and Appeals (DHA), which was received at DHA on September 25, 2012. The request identified appeals of the medical assistance application denial and of the termination of benefits.
6. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the November 24, 2010, BC application denial prior to September 24, 2012.
7. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the September 1, 2010, BC discontinuance prior to September 24, 2012.

### **DISCUSSION**

An Administrative Law Judge (ALJ) 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 Medical Assistance (MA) must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the September 1, 2012, discontinuance of petitioner's BadgerCare Core Plan due to respondent's determination that petitioner was not an eligible immigrant .

During the November 2, 2012, hearing, petitioner did not establish that she failed to receive the July 23, 2010, notice, which stated her BC Core Plan would discontinue as of September 1, 2010. In like fashion, petitioner did establish that she failed to receive the November 24, 2010, notice, which advised petitioner of the denial of her BC application.

Moreover, each of the notices was sent to the petitioner at her correct address, and there is no evidence that either notice was returned to the respondent as undeliverable. The petitioner did not allege any problems with her mail delivery. The record contains no evidence that the respondent attempted to prevent the petitioner from filing a timely appeal at DHA.

During the November 2, 2012 hearing, petitioner was not able to provide any valid reason or good cause for not filing an appeal with DHA during the respective 45-day periods following the termination and the denial notices. Accordingly, for the above reasons, I must conclude that because petitioner did not appeal either the BC Core Plan discontinuance or the application denial within either of the respective 45-day time limits, the Division of Hearings and Appeals has no subject matter jurisdiction to address these matters.

### **CONCLUSIONS OF LAW**

1. There is no subject matter jurisdiction regarding the September 1, 2010, discontinuance of petitioner's BadgerCare Core Plan benefits, as the appeal is untimely.

2. There is no subject matter jurisdiction regarding the November 24 , 2010, denial of petitioner's BadgerCare Core Plan application, as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

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 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 3rd day of December, 2012

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\sPeter McCombs  
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 3, 2012.

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