



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCC/144144

PRELIMINARY RECITALS

Pursuant to a petition filed September 27, 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 November 13, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether it was correct to discontinue petitioner's BadgerCare Plus Core Medical Assistance ["MA Core"] effective July 1, 2012.

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: Mary E. Hartung, Income Maintenance ["IM"] Advanced
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

OTHER PERSON PRESENT:

[REDACTED], petitioner's mother

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 June 11, 2012 and entitled *About Your Benefits*; that notice informed her that her enrollment in MA Core would end on July 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 did not request a Hearing concerning the July 1, 2012 ending of her MA Core until September 27, 2012; her request for a Hearing was made by way of a *Request For Fair Hearing* form dated September 24, 2012 and received by DHA via fax on September 27, 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 July 1, 2012 ending of petitioner's MA Core. Petitioner's request for a Hearing was not filed until September 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.

Petitioner testified that she did not ask for a Hearing sooner because she was told by a worker at the Indian Health Center that she should not pay the MA premium or renew because as a Native American she did not have to do so. This is unfortunate, but it does not create jurisdiction where none otherwise exists.

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 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 14th day of November, 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 November 14, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability