



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/144336

PRELIMINARY RECITALS

Pursuant to a petition filed October 04, 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 petitioner request for hearing was 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: Sharon Thacker

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was enrolled in BadgerCare Plus at the beginning of 2012.
3. On March 9, 2012, the Department sent indicating to petitioner that she would be disenrolled from BC+ effective April 1, 2012 due to failure to cooperate with the child support agency. The notice indicated that an appeal was due by May 17, 2012.

4. On May 16, 2012, petitioner was sent another notice from the Department indicating that BC+ would end on June 1, 2012 due to her failure to cooperate with the child support agency. The notice stated that any appeal was due by July 17, 2012.
5. Both notices were sent to petitione r's correct address.
6. Petitioner filed an appeal on October 5, 2012.

DISCUSSION

An administrative law judge (ALJ) or 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 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, petitioner could have filed her appeal in the time required after the first notice, or after the second notice. In either case, she would have perfected an appeal. She did not. She claims that she received neither notice. There is no indication that either, or both, were returned to the agency as undelivered. Petitioner claimed that she learned of the termination from a provider on May 23. Accepting her story, had she sought clarity from the agency at that time, and been vigilant about clearing this up, she still would have had nearly two months from the day she learned of the termination to file a timely appeal. She did not.

CONCLUSIONS OF LAW

The appeal is not timely.

THEREFORE, it is

ORDERED

That this appeal is dismissed as untimely.

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

John 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 November 14, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability