



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/144376

PRELIMINARY RECITALS

Pursuant to a petition filed October 04, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marathon County Department of Social Services in regard to Medical Assistance, a hearing was held on November 21, 2012, at Wausau, Wisconsin.

The issue for determination is whether the petitioner's appeal 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: Patsy Krueger

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. On September 9, 2011, the Marathon County Child Support Agency informed the respondent that petitioner had failed to cooperate in identifying the father of her child.
3. September 12, 2011, the respondent issued a notice of decision indicating petitioner's family MA would be ending based upon petitioner's non-cooperation with the Child Support Agency.

4. On September 12, 2012, respondent sent petitioner a notice informing her that her BadgerCare Plus benefits would be ending as of October 1, 2012, due to her failure to cooperate with the Child Support Agency.
5. Petitioner filed her Request for Fair Hearing on October 4, 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 BadgerCare Plus 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) (2006); Wis. Stat. § 49.45(5) (2009-10); Wis. Admin. Code § DHS 104.01(5)(a)3; Wis. Admin. Code § HA 3.05(3) (September 2001); *BadgerCare Plus Eligibility Handbook* 29.2. 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).

In this case, the action being appealed is the October 1, 2011 BadgerCare Plus discontinuance. Petitioner's request for a Hearing was not filed until October 4, 2012. See, Wis. Admin. Code §§ HA 3.05(2)(a) & 3.05(3)(c) (September 2001). This is more than a year beyond date of action, and well past the allowable 45 days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

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 21st day of December, 2012

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 21, 2012.

Marathon County Department of Social Services
Division of Health Care Access and Accountability