



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/144663

PRELIMINARY RECITALS

Pursuant to a petition filed October 18, 2012, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access And Accountability (DHCAA) to discontinue Medical Assistance (MA) under the Wisconsin Well-Woman (WWMA) program, a hearing was held on November 28, 2012, by telephone.

The issue for determination is whether petitioner can be eligible for WWMA when she no longer has a diagnosis of breast cancer.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Atty. David E. Lasker

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Nina Hernandez-Wilson
Division of Health Care Access And Accountability
P.O. Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.
2. In February, 2008, petitioner was diagnosed with breast cancer. She was granted eligibility for WWMA. WWMA was renewed yearly until the action at issue in this appeal.

3. Petitioner's breast cancer treatment ended in late 2008. She then was treated for pre -cervical cancer in 2009 and had a hysterectomy in approximately April, 2009. Since then petitioner has been treated for a number of conditions, some of which may have been caused by the cancer treatment.
4. Petitioner was due for a yearly renewal by the end of August, 2012. WWMA closed effective September 1, 2012 because the review papers were not filed.
5. Petitioner contacted the WWMA program's Ms. Hernandez-Wilson on September 10 to request another renewal form. Ms. Hernandez-Wilson informed petitioner that the form needed to be returned by September 30 to get WWMA backdated to September 1, 2012.
6. On Monday, October 1, 2012 petitioner contacted Ms. Hernandez-Wilson to request a two-week extension to file the paperwork because she could not get in to see her doctor for two weeks. Later that day the renewal was received by the WWMA program but not processed because a new application had to be filed. The renewal form included a statement that petitioner had breast cancer and included a purported doctor's signature dated September 30, 2012. It was sent by the Juneau County Health Department.
7. On October 5 the application forms were filed. On October 9 the WWMA program informed petitioner the WWMA was granted effective October 9, 2012. In actuality it was granted effective October 5.
8. On October 12 petitioner's Juneau County representative contacted Ms. Hernandez -Wilson to request that WWMA be backdated to September 1. Ms. Hernandez-Wilson asked if petitioner had been able to see her doctor and the representative told her that the form had been sent in without a doctor visit. That was the first time Ms. Hernandez-Wilson heard about the form dated September 30 and that petitioner had been determined to be eligible.
9. Ms. Hernandez-Wilson then contacted the office of petitioner's primary doctor. His nurse informed her they have no knowledge of petitioner having breast cancer and that they had been assured that petitioner was eligible for the program if the doctor were treating petitioner for any condition. She referred Ms. Hernandez- Wilson to petitioner's oncologist.
10. Ms. Hernandez-Wilson contacted the oncologist's office. A medical assistant at the office informed her that petitioner's record stated, in July, 2012, that there was no clear evidence of breast cancer and that petitioner would be re-evaluated in one year.
11. The WWMA program then cancelled petitioner's eligibility as of October 6, 2012, and sent petitioner a notice dated October 12, 2012 informing petitioner that WWMA was denied because she did not meet program requirements.
12. Although not ordered initially by the Division of Hearings and Appeals, on November 30, 2012, benefits were ordered to be continued pending a decision.

DISCUSSION

WWMA is authorized by Wis. Stat., §49.473. Eligibility criteria are listed in §49.473(2), and they include the following: "(e) The woman requires treatment for breast or cervical cancer or for a precancerous condition of the breast or cervix." Eligibility for WWMA provides the woman with full MA services. If she is eligible for any other type of MA the other type takes priority. Wis. Stat., §49.473(2)(a).

Department policies concerning WWMA are found in the MA Handbook, Appendix 36. The requirement that the woman require treatment for breast or cervical cancer is found at Appendix 36.3.1. WWMA eligibility must be reviewed yearly. App. 36.6. In addition, a recipient is required to inform the program of changes that would affect eligibility, including "reporting that she no longer needs treatment for breast

or cervical cancer.” Handbook, App. 36.5.1. If a woman no longer is treated for breast or cervical cancer, eligibility for the program ends. Id. She still could be eligible for MA but through a different program.

The primary issue in this case is whether petitioner continues to be eligible for WWMA. The simple answer is that she is not. She does not have breast or cervical cancer now nor is she being treated for it. She probably has not been eligible for the program since sometime after recovery from her hysterectomy in 2009. It appears to be an error within program that renewals are granted based upon a signature on a form, although one would expect doctors to be forthcoming about the continued diagnosis.

It could be argued that the agency’s case is based entirely on hearsay. The statements by the primary doctor’s nurse and the oncologist’s assistant are indeed hearsay. However, petitioner’s claim to be eligible for the program also is based upon a questionable hearsay statement. That statement was submitted later on the same day that petitioner informed Ms. Hernandez-Wilson that she could not obtain the statement for two weeks, and the statement was dated on a Sunday. A doctor’s statement signed on a Sunday would be questioned by any reasonable person, in particular when, on the day *after* the purported signature, the individual informed the agency that the doctor refused to sign the statement.

Furthermore, petitioner admitted in her testimony that she was told in August, 2008 that the breast cancer was cured. She stated that her current medical conditions are causally related to the cancer treatment, but they are not cancer in themselves. Petitioner still is within the five-year window of possible recurrence, but there has been no recurrence, and the law does not provide for continued eligibility for post-treatment conditions.

Petitioner also requested that the eligibility be granted back to September 1, 2012. Petitioner did not dispute that the closure September 1, 2012 was correct. Instead she argued that filing the paperwork on October 1 should have been sufficient to allow for the backdate since September 30 was a Sunday. See Wis. Stat., §990.001(4)(b).

I am unaware of §990.001(4)(b) ever being used in the context of a filing date for MA or any other assistance program as the date of filing an application is not a deadline but a request for a new eligibility determination. Even if it is applicable, I will not order backdated benefits because we know that petitioner was not eligible for them during September, 2012. It was an error for the program to re-open WWMA based upon the forms submitted October 1 and 5, 2012, and I see no reason to compound the error by ordering eligibility for the dates prior to then. Petitioner is not prejudiced by the refusal to backdate; she knew in September that she was ineligible and that eligibility might not be backdated. Ms. Hernandez-Wilson told her twice that the form had to be in by September 30 to get backdated MA.

CONCLUSIONS OF LAW

The agency correctly denied WWMA upon petitioner’s re -application in October, 2012 because petitioner is not being treated for breast or cervical cancer.

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 10th day of December, 2012

\sBrian C. Schneider
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 10, 2012.

Division of Health Care Access And Accountability
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