



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCC/144673

PRELIMINARY RECITALS

Pursuant to a petition filed October 18, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on November 28, 2012, at Eau Claire, 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: Kristen Proulx

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner was an ongoing recipient of the BadgerCare Plus Core Plan. The county agency notified her on August 17, 2012, that her benefits would end as of September 1, 2012, because

she had not completed her renewal application. That notice indicated that she if she disagreed with the decision she must appeal it by October 17, 2012.

3. The petitioner appealed the agency's decision on October 18, 2012.

DISCUSSION

Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. Enrollment Services notified the petitioner on August 17, 2012, that her benefits would end as of September 1, 2012, because she had not completed her renewal application. The notice indicated that she had until October 16, 2012, to appeal, which is 45 days from September 1, 2012. She appealed on October 17, 2012. Although this is only one day late, and she had a great deal of trouble getting information about her renewal from the various agencies she dealt with, I have no equitable powers that would allow me to consider the fairness of the situation. Therefore, I must dismiss her appeal.

CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner's appeal because it is untimely.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 18th day of December, 2012

\sMichael D. O'Brien
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 18, 2012.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability