



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/144767

PRELIMINARY RECITALS

Pursuant to a petition filed October 23, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dunn County Department of Human Services in regard to Medical Assistance, a hearing was held on November 29, 2012, at Menomonie, 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: Serena Stipek

Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. The county agency notified the petitioner on June 11, 2012, that it was ending her BadgerCare Plus benefits as of July 1, 2012, and would impose a six-month restrictive reenrollment period that ended on November 30, 2012.

3. The petitioner appealed the agency's notice on October 23, 2012 .

DISCUSSION

The petitioner had been receiving medical assistance under BadgerCare Plus, which covers children under 19 and their parents. Wis. Stat. § 49.665. The county agency ended her benefits as of July 1, 2012, because she failed to pay the premium due on their behalf by that date. The program's rules require recipients to pay a premium by "the 10th of the month prior to the month for which the premium is required." Wis. Admin. Code § DHS 103.085(1)(d)2. If a person fails to pay the premium by the end of the month for which it is due, benefits end on the last day of that month. Wis. Admin. Code § DHS 103.085(1)(d)3. At the time of the petitioner's alleged failure to pay her premium, those whose benefits ended because they did not pay a premium cannot reenroll for six months. (This period has since been increased to 12 months.)

The petitioner contends that she did not receive a notice increasing her premium but that she did pay the premium before July 2012. I am skeptical of her contention because she concedes that she had been having trouble coming up with the money to pay the premium and had not paid her previous premium on time. More importantly, the fact that she filed an appeal means that she was aware that her benefits had ended. If she thought she paid the premium in question on time, one would think that she would believe that she was still eligible for benefits and thus would not file an appeal unless a medical provider told her she was no longer covered. She never testified that she learned of her ineligibility from a provider. The only other way she would be aware that her benefits had ended would be through a combination of receiving the agency's notice and having the knowledge that she had not in fact paid the premium on time. Although she denied receiving a premium notice, she did not deny that she received the notice ending her benefits. The county worker testified that this was sent out on June 11, 2012. 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. The petitioner's benefits ended on July 1, 2012, but she did not appeal until October 23, 2012, which is 115 days later. Because her appeal is late, there is no jurisdiction to consider it.

I note that this decision has little practical effect because the petitioner said that she has had almost no medical bills since July 1, 2012, and she became eligible to reenroll on December 1, 2012. Even if she had prevailed in this matter, if she did wish to have the medical bills she incurred since July 1, 2012, covered, she would have had to have paid any premiums due for the six months from then through November 30, 2012.

CONCLUSIONS OF LAW

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

THEREFORE, it is

ORDERED

That 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 27th day of December, 2012

\sMichael D. O'Brien
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 27, 2012.

Dunn County Department of Human Services
Division of Health Care Access and Accountability