



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCC/144840

PRELIMINARY RECITALS

Pursuant to a petition filed October 25, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on November 29, 2012, at Neenah, Wisconsin.

The issues for determination are whether (1) petitioner's appeal was timely filed, and (2) the Department correctly discontinued the petitioner's BadgerCare Plus Core Plan coverage.

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: Leslie Vosters, fair hearing coord.
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. BadgerCare Plus Core Plan (BCP-C) is a Wisconsin variant of MA for non-disabled, childless adults. BCP-C recipients must undergo an annual review. The petitioner's annual review was

due in June 2012. The petitioner attempted unsuccessfully to perform his review online (no tracking number), on an unknown date, allegedly in May 2012. The Department contacted him on June 7, 2012 to perform a review. He was then advised to submit income verification and a signature page by June 25, 2012. He did not do so. An extension was granted to July 23, 2012. A notice was issued to the petitioner on July 12, identifying July 23 as the deadline for submitting earnings verification, a signature, and the non-refundable \$60 annual fee. See, Exhibit 1. The verification and signature were not received by August 1, 2012, so the Department closed the BCP-C case.

3. On August 2, 2012, the Department issued written notice to the petitioner advising that his BCP-C case had closed effective July 1 (error) and September 1, 2012. The hearing request deadline stated in that notice was September 17, 2012. See, Exhibit 2C, p.6. The petitioner has not moved within the last four years; the notice was sent to his correct address.
4. The petitioner submitted income verification and a signature page to the Department on October 15, 2012. The Department did not reopen his case. He may be on or get on a waiting list for BCP-C.
5. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on October 25, 2012.

DISCUSSION

A 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 MA must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed **84** days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition 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 15th day of January, 2013

\sNancy J. Gagnon
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 January 15, 2013.

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