



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCC/144940

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on December 06, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner timely requested a fair hearing regarding respondent's termination of her BadgerCare Plus Core Plan benefits as of August 1, 2012.

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: Mary Hartung
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received BadgerCare (BC) Plus Core Plan benefits.
2. The Milwaukee Enrollment Services sent a July 18, 2012, Notice of Decision to the petitioner at her correct address stating that effective August 1, 2012, her BadgerCare Plus benefits would

discontinue, due to her failure to timely pay application fee and thereby complete her renewal. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) by September 17, 2012. See Exhibit 3.

3. Petitioner did not dispute that she received the July 18, 2012, notice (Exhibit 3). The petitioner mailed an October 28, 2012, appeal to the Division of Hearings and Appeals (DHA) which was postmarked on October 29, 2012, and received at DHA on November 1, 2012.
4. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the August 1, 2012 BC discontinuance prior to October 29, 2012.

DISCUSSION

An administrative law judge (ALJ) or 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 Medical Assistance (MA) must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0.** A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the August 1, 2012, discontinuance of petitioner's BadgerCare Plus Core benefits due to failure to timely pay the application fee, and thereby complete her renewal. See Exhibit 3.

During the December 6, 2012 hearing, petitioner did not dispute that she received the July 18, 2012, notice which stated her BC Plus benefits would discontinue as of August 1, 2012. Petitioner's appeal was post-marked October 29, 2012, which is 89 days after the termination date. Even if petitioner were to argue that the 45 day period should have commenced on September 1, 2012, since she had a month-long grace period to submit her application fee and complete her renewal, the request for hearing was not received until 58 days following expiration of the grace period.

There was no evidence or allegation that the respondent attempted to prevent the petitioner from filing a timely appeal at DHA. Respondent did not raise the issue of timeliness, focusing its testimony instead on petitioner's allegations that she received incorrect instructions regarding payment of her application fee. However, whether or not respondent noted the timeliness issue is moot; the fact remains that the appeal was untimely filed, which deprives me of jurisdiction to rule on the underlying issue.

Accordingly, for the above reasons, I must conclude that because petitioner did not appeal the August 1, 2012, BC Plus discontinuance within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the discontinuance issue in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the August 1, 2012 discontinuance of petitioner's BadgerCare Plus benefits, as the appeal is untimely.

THEREFORE, it is

ORDERED

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 14th day of January, 2013

\sPeter McCombs
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 14, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability