



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCC/145072

PRELIMINARY RECITALS

Pursuant to a petition filed November 05, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Brown County Human Services in regard to Medical Assistance, a hearing was held on December 18, 2012, at Green Bay, Wisconsin.

The issue for determination is whether the 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: Heidi Kordus

Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner left Wisconsin on a trip to Alaska on July 3, 2012.
3. The Department sent appropriate notices to petitioner informing him of a new liability for monthly premiums to remain eligible under the BC Core Plan.

4. On August 17, 2012, the Department sent petitioner a notice informing him that his BadgerCare Core Plan medical assistance would be terminated effective September 1, 2012 unless his premium was paid.
5. Petitioner was in Alaska. Petitioner thought he had anticipated all possible payments that would be due. Petitioner had not arranged for the payment of the BadgerCare MA premium. Petitioner's sister was retrieving petitioner's mail and keeping a pile for him to address upon his return. Petitioner did not pay the premium by the due date.
6. Petitioner returned from his trip on September 6, 2012.
7. Petitioner's appeal was filed on November 7, 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 September 1, 2012 BadgerCare termination. Petitioner's appeal was due on or before October 17, 2012.

Petitioner's request for hearing was not filed before the 45 -day deadline. At the hearing, petitioner did not dispute receipt of the notice. The notice was sent to the accurate address and the record does not reflect that it was returned as undelivered. Petitioner did not inform the Department of an updated mailing address in Alaska. Petitioner also did not arrange for any contingency to address mail that needed immediate attention in his absence. The failure was petitioner's. The appeal was untimely.

CONCLUSIONS OF LAW

The appeal was not timely.

THEREFORE, it is

ORDERED

That this 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 17th day of January, 2013

\sJohn P. Tedesco
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 January 17, 2013.

Brown County Human Services
Division of Health Care Access and Accountability