



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/145272

PRELIMINARY RECITALS

Pursuant to a petition filed November 13, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a hearing was held on December 18, 2012, at Hayward, Wisconsin.

The issue for determination is whether the county agency correctly refused to reinstate the petitioner's husband into the BadgerCare Plus Core Plan after his benefits ended because he was incarcerated.

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: No Appearance

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495 -8095

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Sawyer County.
2. The petitioner and her husband were ongoing recipients of the BadgerCare Plus Core Plan.
3. The petitioner's husband was incarcerated on August 9, 2012.

4. The county agency notified the petitioner on August 17, 2012, that her husband's BadgerCare Plus Core Plan benefits would end as of September 1, 2012, because of his incarceration. She filed her only appeal on November 13, 2012.
5. The petitioner was released from jail on November 5, 2012.

DISCUSSION

The petitioner's husband was an ongoing recipient of the BadgerCare Plus Core Plan, which provides medical assistance to those between 18 and 64 years old who do not have any children under 19 years old. *BadgerCare Plus Eligibility Handbook*, § 43.2. In August 2012 the petitioner reported that her husband had been incarcerated earlier that month. Wisconsin law bars medical assistance payments "with respect to: ... 3. Care or services for an individual who is an inmate of public institution...." Wis. Stat. § 49.47(6)(c). The county agency notified her on August 17, 2012, that his benefits would end as of September 1, 2012. He was released on November 5, 2012, but before then his wife called the agency about reinstating his benefits. It did not do so because it contends that he had been out of the program for more than one month. The petitioner filed her only appeal in this matter on November 13, 2012, and neither the petitioner nor her husband have filed a new application since his benefits ended.

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. Because the petitioner appealed the agency's decision to end his benefits 74 days after those benefits ended, I have no jurisdiction to consider the appeal, and must assume that the agency correctly ended those benefits. This means that his BadgerCare Plus Core Plan case is closed. In order to regain his eligibility, he must reapply for benefits; it is not enough that he call the agency and ask that they reinstate him into the program. Because he has not reapplied, there is nothing for the agency to deny; because there is nothing for the agency to deny, there is no remaining agency action for me to rule on.

CONCLUSIONS OF LAW

The county agency correctly refused to reinstate the petitioner's husband into the BadgerCare Plus Core Plan because his benefits ended and he has not reapplied for benefits.

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 4th day of January, 2013

\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 January 4, 2013.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability