



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCS/145273

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 15, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on January 17, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the appeal is timely and, if so, whether the agency properly placed the Petitioner in restrictive reenrollment status effective 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: Lauren Fox

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On June 11, 2012, the agency issued a Notice of Decision to the Petitioner at [REDACTED] [REDACTED] notifying the Petitioner that her monthly premium for BadgerCare Plus Standard Plan would be \$66 effective July 1, 2012. It informed her of the right to appeal the

determination if an appeal is filed on or before August 16, 2012 with the Division of Hearings and Appeals.

3. On July 18, 2012, the agency issued a Notice of Decision to the Petitioner at [REDACTED] [REDACTED] notifying her that her BCP premium has not been paid and if she wants to stay enrolled in the program she must pay the premium right away. It also informed her that if the premium is not paid by the end of next month, she is not eligible to enroll in BCP for the next 12 months. The notice informed her of the right to appeal this determination by September 17, 2012.
4. On August 1, 2012, the Petitioner was placed in restrictive reenrollment status for the period of August 1, 2012 – July 31, 2013 for non-payment of the monthly premium.
5. On November 1, 2012, the Petitioner moved to a new address. She reported this move to the agency prior to it occurring in October, 2012.
6. On November 15, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

**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. Sections 49.45(5), Wis. Stats. In this case, the agency provided notice on June 11, 2012 and July 18, 2012 to the Petitioner that her BC+ benefits would end on August 1, 2012 if a \$66 monthly premium was not paid before August 31, 2012. The notice was sent to the correct address for the Petitioner. There was no testimony that the Petitioner did not receive the notices. The Petitioner testified that she moved but this was not until November 1, 2012.

The Petitioner testified that she never received a premium coupon that the agency indicated it would send for payment of the monthly premium. She testified that she found out that she had been placed in restrictive re-enrollment status when she contacted the agency in October, 2012. The Petitioner also testified that she moved; however, she provided a lease to show that she moved on November 1, 2012. When the agency did not receive the Petitioner’s premium by August 31, 2012, it placed her in restrictive re-enrollment status for 12 months beginning August 1, 2012. The notice informing the Petitioner of this action was dated July 18, 2012. The actual negative action of placing the Petitioner in restrictive re-enrollment was August 1, 2012. The Petitioner received proper notice that this would occur if her payment was not made prior to August 31, 2012. The Petitioner's appeal was filed 107 days after the date of the action on August 1, 2012. Thus, it was untimely, and no jurisdiction exists for DHA to consider the merits of the case.

**CONCLUSIONS OF LAW**

The Petitioner’s appeal is untimely.

**THEREFORE, it is ORDERED**

That the petition be, and hereby 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 Milwaukee,  
Wisconsin, this 5th day of February, 2013

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\sDebra Bursinger  
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 February 5, 2013.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability