



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCS/145405

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 20, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a telephonic hearing was held on January 08, 2013, at Milwaukee, Wisconsin. At the request of petitioner, a hearing set for December 12, 2012 was rescheduled.

The issue for determination is whether the petitioner's appeal of the August 1, 2012 discontinuance of her BadgerCare Plus benefits 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: Sharon Thacker, HSPC senior  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received BadgerCare (BC) Core Plan benefits for herself and her family.
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 her BC premium. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) within 45 days of the notice's effective date (deadline of September 17, 2012). See Exhibit 1.

3. Petitioner did not dispute that he received the July 18, 2012 notice (Exhibit 1).
4. The petitioner mailed an appeal to the Division of Hearings and Appeals (DHA) which was postmarked on November 20, 2012, and received at DHA on November 21, 2012.
5. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the August 1, 2012 discontinuance prior to November 20, 2012.

### DISCUSSION

An Administrative Law Judge (ALJ) 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.** An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). 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 benefits due to failure to timely pay her required BC premium.

During the January 8, 2013 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. There was no evidence that anyone at MES attempted to prevent the petitioner from filing a timely appeal at DHA.

During the January 8, 2013 hearing, petitioner was not able to provide any valid reason or good cause for not filing an appeal with DHA during the 45 day period (until September 17, 2012) after receiving the July 18, 2012 notice discontinuing her BC benefits effective August 1, 2012. In fact, the petitioner admitted that her appeal was untimely, and explained that she "lost track of time." Such confusion does not establish good cause for a late appeal. 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 August 1, 2012 BadgerCare 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 1st day of March, 2013

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\sGary M. Wolkstein  
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 March 1, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability