



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCC/145429

PRELIMINARY RECITALS

Pursuant to a petition filed November 24, 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 January 29, 2013, at Green Bay, Wisconsin.

The issue for determination is whether the Department erred by terminating BadgerCare Core benefits due to petitioner's failure to complete his annual review.

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: Lisa Selner

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 was a member of the BC+ Core plan.

3. On 1/16/12 the Department sent notice to petitioner's last known address informing him that his review was due before February 29, 2012.
4. Petitioner did not respond.
5. On February 17, 2012, the Department sent another notice informing petitioner that his benefits would terminate on March 1, 2012 if he did not complete his review.
6. Petitioner did not respond.
7. BC+ closed for petitioner on March 1, 2012.
8. Petitioner filed a request for hearing on November 26, 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.** 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 March 1, 2012 discontinuance of petitioner's BadgerCare Core Plan due to failure to timely complete his required review.

Petitioner states that he did not get notice. He states that he was in prison and could not file a timely appeal. This is not the fault of the Department. They sent notices to petitioner's last known address. They need not do more than that. The appeal is untimely and I have no jurisdiction to decide the merits of the matter.

However, if it is later deemed that this appeal is timely, the petitioner would have to lose on the merits. The Department made no error in this case. There is not requirement that it make exceptions to standard practice because a person is incarcerated or that they fail to make proper arrangements to address their personal mail and other business.

CONCLUSIONS OF LAW

The appeal is not timely; and, the Department did not err in terminating BC+ benefits as petitioner failed to complete the review.

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 12th day of February, 2013

\sJohn P. Tedesco
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 12, 2013.

Brown County Human Services
Division of Health Care Access and Accountability