



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCC/145430

PRELIMINARY RECITALS

Pursuant to a petition filed November 24, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Forest County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on February 04, 2013.

The issue for determination is whether it was correct to discontinue petitioner's MA BadgerCare Plus Core ["MA Core"] effective September 1, 2012.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Beulah Garcia, Resolution Coordinator
Northern Consortia
Forest County Department of Social Services
200 E. Madison Street
Crandon, WI 54520

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Forest County.
2. On August 15, 2012 petitioner did her MA Core renewal with the County.

3. The County sent a notice to petitioner dated August 17, 2012 and entitled *About Your Benefits* informing her that her MA Core would end effective September 1, 2012 because “renewal has not been completed.” At that time petitioner had not yet paid the processing fee or returned documentation to the County.
4. The County sent a notice to petitioner dated August 21, 2012 and entitled *About Your Benefits* informing her that “[y]our application was denied” because “you did not pay the nonrefundable application processing fee.” At that time petitioner had not yet paid the processing fee or returned documentation to the County.
5. On August 23, 2012 the County received documentation from petitioner including verification of income, notice of a change that needed to be made, and a signed signature page.
6. On August 24, 2012 petitioner paid the processing fee.
7. The County closed petitioner’s MA Core effective September 1, 2012 because it claims that it never received a signed signature page; no notice was ever sent to petitioner informing her that her MA Core would close because a signed signature page had not been received by the County.

DISCUSSION

Completion of a periodic case review is a condition of receiving MA Core. 42 C.F.R. § 435.916(a) (2011); Wis. Stat. § 49.45(23) (2009-10); Wis. Admin. Code §§ DHS 101.03(95), 102.04(3)(c), 103.01, & 103.10 (December 2008); *BadgerCare + Eligibility Handbook* [“BCEH”], 43.9. The agency must give the recipient timely advance notice of the date on which the recipient's eligibility will be redetermined. The notice must be in writing and mailed to the recipient at least 15 calendar days but no more than 30 calendar days before the redetermination date. Wis. Admin. Code § 103.10 (December 2008).

In this case, the County closed petitioner’s MA Core effective September 1, 2012 because it claims that it never received a signed signature page. However, petitioner testified credibly that she submitted a signed signature page to the County on August 23, 2012 along with other documentation. The County representative explained that all the documents were sent to petitioner at once and agreed that it would not make sense that petitioner would have returned other documentation and not the signed signature page. Based on the preponderance of the credible evidence in the record of this matter it must be concluded that petitioner returned the signed signature page to the County on August 23, 2012. See, Wis. Admin. Code § HA 3.09(4) (September 2001). Therefore, it was not correct to discontinue petitioner’s MA Core effective September 1, 2012.

Finally, it is noted that petitioner did not request a Hearing until November 24, 2012. Thus, it might be argued that the Division of Hearings and Appeals [“DHA”] lacks jurisdiction in this matter because petitioner did not request a Hearing in a timely manner. However, jurisdiction in such a case is not lost if petitioner never received proper notice of the action being appealed. No notice was ever sent to petitioner informing her that her MA Core would close because a signed signature page had not been received by the County.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to discontinue petitioner’s MA Core effective September 1, 2012.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, that the County not discontinue petitioner's MA Core effective September 1, 2012, and that, within 10 days of the date of this Decision, the County issue all MA Core benefits to which petitioner is otherwise entitled retroactive to September 1, 2012.

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 8th day of February, 2013

\sSean P. Maloney
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 8, 2013.

Forest County Department of Social Services
Division of Health Care Access and Accountability