



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCC/145786

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 06, 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 29, 2013, at Kenosha, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely, whether the Kenosha County Human Service Department (the agency) correctly terminated Petitioner's Badger Care Core benefits effective October 1, 2012, and whether the agency correctly placed Petitioner on a wait list after he filed a new application.

NOTE: The record was held open to give the agency an opportunity to supplement the record. On January 29, 2013, the agency submitted excerpts from the BadgerCare+ Eligibility Manual, four of five pages of a notice sent to Petitioner on September 10, 2012, and a printout of an inmate search from the Kenosha County Sheriff's Department website. The packet has been marked as Exhibit 4 and entered into the record.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Lauren Fox, Fair Hearing Coordinator; Karen Mayer, Fair Hearing  
Representative and Karen Marquardt, Fair Hearing Representative  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner was incarcerated at the Kenosha County Jail from August 28, 2012 to September 12, 2012. (Testimony of Petitioner)
3. Petitioner returned to custody on October 10, 2012 and was released on October 22, 2012. (Exhibit 4, pgs. 8 and 9)
4. On September 10, 2012, the agency sent a notice to Petitioner, at his parent's address, indicating that his Badger Care Core benefits would be ending effective October 1, 2012, because he was incarcerated. (Exhibit 5, pgs. 5-7)
5. Petitioner reapplied for Badger Care Core benefits on November 15, 2012 and was placed on the wait list. (Exhibit 3)
6. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 6, 2012. (Exhibit 1)

### 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 medical assistance must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. However, the agency did not give Petitioner proper notice of its intent to terminate his benefits, because they sent the notice to Petitioner at his private residence, even though it knew he was at the Kenosha County Jail. Consequently, Petitioner's appeal shall be considered timely.

Participants in the BadgerCare+ Core plan must meet the existing BadgerCare Plus financial and non-financial requirements, including those regarding residence. *Badger Care+ Eligibility Handbook (BEH) §43.6.1* "Individuals who are inmates of a public institution are not eligible for BC+. An inmate is residing in a public institution on an involuntary basis. For example, a prisoner in a jail, prison, or other correctional facility is considered an inmate." *BEH §3.6 Inmates*

"Once enrollment has been confirmed, the certification period is continuous for 12 calendar months unless the individual:

- Turns age 65;
- Moves out of the state of Wisconsin;
- Is admitted to an Institution for Mental Disease (IMD);
- **Becomes incarcerated**
- Meets the non-financial criteria for BadgerCare Plus or Medicaid (pregnancy, children in the home, disability, etc.)
- Attains health insurance coverage"

*Emphasis Added; BEH §43.5.3 Certification Period*

Petitioner testified that he was incarcerated at the Kenosha County Jail between August 28, 2012 and September 12, 2012. Based upon the foregoing policy provisions, it is found that the agency correctly terminated Petitioner's BadgerCare+ Core Benefits effective October 1, 2012.

There are certain circumstances in which a person can re-enroll in BadgerCare Core, without being placed on the waitlist, but Petitioner's case does not fall into any of the limited exceptions listed in *BEH§43.1.1* BEH§43.10 states that a wait list was established for applications submitted after October 9, 2009. Thus, the agency correctly placed Petitioner on the wait list, when he re-applied for benefits on November 15, 2012.

**CONCLUSIONS OF LAW**

Petitioner's appeal is timely.

The agency correctly terminated Petitioner's BadgerCare Core benefits, effective October 1, 2012.

The agency correctly placed Petitioner on the wait list for BadgerCare Core benefits.

**THEREFORE, it is**

**ORDERED**

That the 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 Milwaukee,  
Wisconsin, this 8th day of February, 2013.

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\sMayumi M. Ishii  
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.

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