



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCB/145888

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on February 05, 2013, at Waukesha, Wisconsin.

The issues for determination are whether Waukesha County Health and Human Services (the agency) correctly denied Petitioner's August 2012 application for BadgerCare+ benefits for her grandson and whether the agency failed to backdate the grandson's benefits, after Petitioner reapplied for benefits in November 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: Lynn Boyanga

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. Petitioner's teenage daughter gave birth to a baby on June 27, 2012. (Exhibit 2, Petitioner's testimony)
3. On August 20, 2012, Petitioner applied for BadgerCare+ benefits on behalf of her grandchild, via the on-line ACCESS program. (Exhibit 3)
4. On September 20, 2012, the agency sent Petitioner a manual notice indicating that she needed to pay a premium of ten dollars per month in order to get coverage for her grandson, and that a total of \$30.00 was due by September 29, 2012, to cover premiums for August, September and October 2012. (Exhibit 2)
5. On September 21, 2012, the agency sent Petitioner an automated notice indicating that she needed to pay a premium by September 29, 2012, and that a failure to do so would result in a denial, decrease or termination of benefits. (Exhibit 5)
6. Petitioner did not have the money to pay the \$30.00 in premiums, when she received the notice(s) on or about September 23, 2012 and so, waited until her next pay day, Friday, September 28, 2012. Petitioner mailed the premiums on Saturday, September 29, 2012. (Petitioner's testimony)
7. On October 2, 2012, the agency sent Petitioner a notice indicating that it was denying her application for BadgerCare+ benefits because the premium had not been paid. (Exhibit 7)
8. The agency did not receive Petitioner's payment until October 4, 2012. Consequently, the check was returned to Petitioner. (Exhibit 2, Testimony of Ms. Boyanga)
9. Petitioner re-applied for benefits in October 2012 and received notice that her grandchild was approved for BadgerCare+ Benefits effective February 1, 2013, onward. (Petitioner's testimony)
10. The benefits should have been backdated to July 1, 2012, three months before the new application. (Testimony of Ms. Boyanga)
11. Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on December 11, 2012.

DISCUSSION

Petitioner filed an appeal, because she does not believe the August 2012 application for benefits should have been denied. Petitioner also filed an appeal, because she believes that her grandson's BadgerCare+ eligibility should be backdated to his date of birth, June 27, 2012.

With regard to the denial of the August 2012 application for BadgeCare+ benefits, Petitioner's appeal is untimely. 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. A negative action can be the denial of an application, the reduction of benefits, or the termination of an ongoing case.

Petitioner was given notice on October 2, 2012, that her application for benefits was denied. Thus, the date of action is October 2, 2012. Petitioner's appeal was filed on December 11, 2012, 70 days after the date of action. Thus, it was untimely, and no jurisdiction exists for considering the merits of whether the agency correctly denied her application on October 2, 2012.

With regard to the issue of backdating, it is undisputed that Petitioner filed a new application for BadgerCare+ benefits, on behalf of her grandchild, in October 2012.

“Infants less than 1 year old may have their eligibility backdated up to the first of the month, three calendar months, prior to the month of application, for any of the months in which their family income was at or below 300% of the FPL.” *BadgerCare+ Eligibility Handbook §25.8.1*

It is undisputed that the agency should have backdated the benefits to July 1, 2012. However, because the most recent application was submitted in October 2012, the benefits for Petitioner’s grandson cannot be backdated to June 2012, because that would be four months prior to the month of application.

Petitioner expressed a great deal of frustration and anger regarding the application process and argues that refusing to backdate benefits to June 2012 is unfair because she and her daughter were either given no information or incorrect information regarding when and how to apply for benefits. Petitioner also argues that she did her best to comply with all that was asked of her. However, I cannot address arguments based on what a party believes fairness might be thought to require.

An ALJ does not possess any equitable powers but must apply the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993).

CONCLUSIONS OF LAW

Petitioner’s appeal of the October 2, 2012 denial of her application for BadgerCare+ benefits is untimely and no jurisdiction exists to consider the merits of that issue.

The agency incorrectly made the child’s BadgerCare+ benefits effective February 1, 2013. The child’s eligibility should have been backdated to July 1, 2012.

THEREFORE, it is

ORDERED

That the agency backdate BadgerCare+ benefits to July 1, 2012 for Petitioner’s grandchild, if the child is otherwise eligible. The agency shall take steps to do this within 10 days.

The petition is dismissed is otherwise 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 11th day of February, 2013.

\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 11, 2013.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability