



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/146021

PRELIMINARY RECITALS

Pursuant to a petition filed December 17, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 23, 2013, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to May and June 2012 denials of a request for Medicaid and whether it is premature as to a pending disability based Medicaid application.

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: Mary Hartung

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner applied for Medicaid benefits at some point in the late spring of 2012. That application was denied and Petitioner was sent in a Notice of Decision dated May 25, 2012 that indicated her application had been denied because she did not meet any the standards necessary for Medicaid coverage. An appeal deadline of July 17, 2012 was noted in the Notice of Decision. The Notice of Decision was sent to Petitioner at the above address. No appeal was received by the Division of Hearings and Appeals. Exhibit #3.

3. It is not clear whether Petitioner reapplied for Medicaid or was simply sent a duplicate notice based upon the application noted at Finding # 2 but, regardless, Petitioner was sent a Notice of Decision dated June 14, 2012 that informed her that an application for Medicaid had been denied because she did not meet any of the standards necessary for approval. That was sent to Petitioner at the above address. That Notice of Decision also contains appeal structures and notes the appeal deadline to be July 30, 2012.
4. This appeal was filed on December 17, 2012.
5. In September 2012 Petitioner submitted a Medicaid application alleging disability. That application was forwarded by the local agency to the Disability Determination Bureau (DDB) in Madison. Just prior to writing this decision, the undersigned did check with the DDB regarding that disability application. The DDB does have the application and it is still obtaining and/or reviewing medical records; no decision by the DDB has been made as of the date of this Decision.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. §49.45(5)(a), *Wis. Stats.* The appeal in this case was filed on December 17, 2012. This is well past the filing deadlines noticed in the May and June in the Notices of Decision described above. Thus this appeal is untimely and the Division of Hearings and Appeals without authority to act as to the earlier application(s).

As for the September 2012 disability based Medicaid application, application is still pending and a decision has not yet been made. If the initial decision is a denial, Petitioner will be sent forms which the offer to make a request for reconsideration by the DDB. If she files those forms and her application is again denied the DDB will forward the file to the DHA which will then set a hearing date for Petitioner. See *Medicaid Eligibility Handbook (MEH)*, §5.5.1.

For Petitioner's information, I also note the following.

To be eligible for Medical Assistance an individual must meet nonfinancial eligibility criteria that include the threshold requirement that a person be elderly, blind, or disabled. See *Medicaid Eligibility Handbook*, § 4.1. Elderly is defined as one who is over age 65. *Id.*, §5.1. Disabled means that a person has been determined by the Disability Determination Bureau to have a disability or is receiving Social Security Supplemental Security Income (SSI) or Social Security Disability Income (SSDI). See *Medicaid Eligibility Handbook*, §5.2.

To be eligible for BC+ an individual must, as with Medical Assistance, meet nonfinancial eligibility criteria. Those requirements are detailed in the *BadgerCare + Eligibility Handbook* at §2.1 and those threshold requirements are as follows:

1. Children under 19.
2. Pregnant Women.
3. Parents/Caretakers of children under 19 years of age, including some parents and caretakers whose children have been removed from the home and are in the care of the child welfare system.
4. Young adults exiting out of home care (such as foster care).

CONCLUSIONS OF LAW

1. That Petitioner's appeal is untimely as to the denial of a spring 2012 application for Medicaid (that includes BadgerCare+) benefits.

2. That Petitioner's appeal is premature as to an application for disability-based Medicaid.

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 Milwaukee,
Wisconsin, this 6th day of March, 2013

\sDavid D. Fleming
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 6, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability