



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MQB/146184

PRELIMINARY RECITALS

Pursuant to a petition filed December 24, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services [“County”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on January 28, 2013.

The issue for determination is whether the Division of Hearings and Appeals [“DHA”] has jurisdiction in this matter.

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: Tom Miller, ES Supervisor, Western Consortium
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

OTHER PERSON PRESENT:

[REDACTED], petitioner’s girlfriend

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Vernon County.
2. Petitioner received a notice dated August 17, 2012 and entitled *About Your Benefits*; that notice informed petitioner that his MA Medicare Premium Assistance ["QMB"] would end effective September 1, 2012 because "Your renewal has not been completed;" the notice also informed petitioner of his appeal rights and of the process for requesting a Hearing, including the 45-day time limit for requesting a Hearing; the notice was mailed to petitioner in a window envelope so that the address on the notice showed through to the outside of the envelope for delivery purposes; the address on the notice was petitioner's correct address.
3. Petitioner did not request a Hearing concerning his September 1, 2012 ineligibility for QMB until December 24, 2012; his request for a Hearing was made by way of a *Request For Fair Hearing* form dated December 16, 2012 and received by DHA on December 27, 2012 via U.S. Mail postmarked December 24, 2012.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning QMB is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d) (2011); Wis. Stat. § 49.45(5)(a) (2011-12); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (September 2001). A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (September 2001).

In this case, the action being appealed is the September 1, 2012 discontinuance of petitioner's QMB. Petitioner's request for a Hearing was not made until December 24, 2012. This is outside of the allowable 45 days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner's girlfriend testified that petitioner never received the August 17th *About Your Benefits* notice. She testified that some of his mail had been going to his old address because the address on the envelope was different than the address on the letter inside. However, the August 17th notice was mailed to petitioner in a window envelope so that the address on the notice showed through to the outside of the envelope for delivery purposes. Further, the address on the notice was petitioner's correct address. Thus, the testimony that petitioner never received the August 17th notice is not credible.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this matter.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 March, 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 March 12, 2013.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability