



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCB/146268

PRELIMINARY RECITALS

Pursuant to a petition filed December 31, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on February 20, 2013, at Kenosha, Wisconsin.

The issues for determination are whether this appeal is timely and whether or not BadgerCare+ premiums may be refunded.

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: Kathy Christman

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner filed this appeal seeking a refund of BadgerCare+ premiums that were allegedly overpaid.
3. Petitioner completed a review in January 2012 and a BadgerCare+ premium of \$30 was established.

4. In April 2012 the agency received a crossmatch of Petitioner's household Social Security benefits. An increase in Social Security benefits for Petitioner's daughter was noted and the BadgerCare+ premium recalculated. The new premium was \$68.00.
5. Petitioner was sent a Notice of Decision dated April 30, 2012 that informed Petitioner that the BadgerCare+ premium would increase June 1, 2012 to \$68.00. That Notice of Decision notes the income determined by the agency for the family members. It also contains appeal instructions that noted an appeal deadline of July 17, 2012.
6. This hearing request was filed on December 31, 2012.
7. The agency reviewed this case for hearing and realized that the Social Security benefit increase for the daughter was noted but that a decrease for Petitioner's son had not been noted. If that had been reported premiums would not have increased based on Social Security income. The agency further reviewed the case and realized that an incorrect amount of earned income had been used in the premium calculation. Given that income the premium for the period involved here should have been there \$110.00 per month during the time involved here. The agency did not seek recovery of the underpayment.

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.* Here Petitioner's appeal is well past the 45 day deadline for appealing the June 1, 2012 premium increase. The Notice of Decision did list the income attributed to the family members. I conclude that the appeal is not timely.

Even if, however, the appeal were timely I would not find for Petitioner. While it is true that a refund may be made where premiums are incorrectly calculated, in this case that would not result in a refund to Petitioner. *BadgerCare+ Eligibility Handbook, §28.9.1.* Though the household's total Social Security income was incorrectly counted so was earned income. Had the earned income been correctly counted the premium would have been \$110 per month.

CONCLUSIONS OF LAW

That this appeal was not timely filed thus the Division of Hearings and Appeals does not have jurisdiction.

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 18th 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 18, 2013.

Racine County Department of Human Services
Division of Health Care Access and Accountability