



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCS/146394

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 05, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on January 31, 2013, by telephone.

The issues for determination are (1) whether petitioner's appeal was timely filed, and (2) whether the petitioner should receive a good cause exemption from a BadgerCare Plus restrictive re-enrollment penalty.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Tom Miller, Supr.

Western Region for Econ. Assistance  
La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. BadgerCare Plus (BCP) is a Wisconsin variant of MA for low income families with minor children or pregnant women. The petitioner's household had an ongoing BCP case, with a premium liability that began in July 2012. The petitioner paid the July premium via check, and set an auto-pay through his bank to cover the premium in subsequent months. Due to a delay in implementation of the automatic payment, the BCP premium for August and subsequent months did not get paid.
3. On August 17, 2012, the Department sent a written notice to the petitioner advising that his adult BCP was ending effective September 1, 2012. The basis for discontinuance was premium nonpayment. The notice also advised that a 12-month restrictive re-enrollment period would be created if payment was not made by the end of October. The notice was addressed to the address that the Department had on file for the petitioner, [REDACTED]
4. The petitioner moved from [REDACTED] to the current [REDACTED] in May 2012. He did not report the change of address to the agency until after mid-September 2012.
5. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on January 5, 2013.

### 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 MA 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 or the reduction or termination of an ongoing case. The petitioner's appeal was filed 126 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I note that if the petitioner had timely reported his address change to the Department in May 2012, and if the Department had then mailed his August 17 discontinuance notice to the old address, I would have been able to toll the running of the appeal period, due to lack of notice. However, the petitioner failed to timely report (10 days) the address change, and the Department did not err by sending notice to his last known address.

### CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition 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 Madison,  
Wisconsin, this 1st day of February, 2013

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\sNancy J. Gagnon  
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 1, 2013.

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