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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MGE/146527

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 15, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on March 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly terminated Petitioner's Medicaid benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

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

By: Alma Lezama, HSPC Sr.  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On or about December 4, 2008, Petitioner submitted an application for Medicaid Presumptive Disability Benefits – Form DDB. (Exhibit 10)

3. On or about December 11, 2008, Petitioner submitted an application for Medicaid-Disability Benefits – Form MADA. (Exhibit 9)
4. Petitioner’s application for Medicaid Presumptive Disability Benefits was approved and he received Medicaid benefits beginning in December 2008, but the Disability Determination Board never made a final determination concerning Petitioner’s alleged disability. (Exhibit 2; Testimony of Petitioner’s father; Testimony of Ms. Lezama)
5. On November 23, 2012, the agency sent Petitioner a notice that effective December 1, 2012, his Medicaid benefits would be ending because he did not provide certain verification and because his income was over the program limit. (Exhibit 4)
6. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 15, 2013. (Exhibit 1)

### DISCUSSION

Persons between 18 and 65 who are not pregnant and have no children under 19 living with them are generally ineligible for regular medical assistance benefits unless they are disabled. Wis. Stat. §§ 49.46(1) and 49.47(4). However, under state and federal regulations, an individual can qualify for Medicaid benefits under a presumptive disability. *Medicaid Eligibility Handbook (MEH) §5.9.1*; see also *Wis. Adm. Code § DHS 103.03(1)(e)*.

Presumptive disability is a method for temporarily determining a disability for an individual while a formal disability determination is being made by the Disability Determination Board (DDB). Presumptive Disability is determined either by the DDB, or in some circumstances, by an income maintenance worker. The regular disability application process must still be completed for persons with a presumptive disability. A presumptive disability decision stands until the DDB makes its final disability determination. *MEH §5.9.1 Emphasis added*

It is undisputed that Petitioner was properly certified for Medicaid under a presumptive disability. It is unclear why Petitioner was qualified for Medicaid benefits under a presumptive disability for as long as he was. Petitioner timely submitted his application for regular Medicaid benefits in December 2008, but for reasons not made clear in the record, the DDB never made a final disability determination. As such, there is no basis in the record for terminating Petitioner’s Medicaid benefits at this time.

Even if it could be established that Petitioner failed to follow the regular disability application process, the agency failed to give him proper notice of the termination of his benefits.

Wis. Admin. Code DHS §103.09(4), states that that the agency shall give timely notice if it intends to terminate medical assistance/Medicaid benefits. Wis. Admin. Code DHS §103.09(4) further states that a written notice must be sent to the Medicaid participant at least 10 days prior the effective date of adverse action. While the agency did send notice to Petitioner that it was going to terminate his Medicaid benefits effective December 1, 2012, the notice was sent on November 23, 2012, less than ten days before the effective date of adverse action. As such, the agency did not give Petitioner proper notice, as required by Wis. Admin. Code DHS §103.09(4).

I also note that under Wis. Admin. Code DHS §103.09(4), the notice must, “ clearly state what action the agency intends to take and the specific regulation supporting that action, and shall explain the right to appeal the proposed action and the circumstances under which MA is continued if a fair hearing is requested.” According to Ms. Lezama, Petitioner’s income was not the reason for the termination of his benefits; Petitioner’s benefits were terminated because the DDB had not yet found Petitioner disabled. The November 23, 2012 notice did not clearly inform Petitioner of this fact. Thus, for this reason also, the notice was defective.

**CONCLUSIONS OF LAW**

The agency did not correctly terminate Petitioner's Medicaid benefits effective December 1, 2012.

**THEREFORE, it is**

**ORDERED**

That within ten days of this decision, the agency recertify Petitioner for Medicaid benefits effective December 1, 2012, until such time as the agency gives him proper notice of the termination of his benefits or the DDB makes a final disability determination.

**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.

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\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 March 18, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability  
[danieltranowski@unitedconveyor.com](mailto:danieltranowski@unitedconveyor.com)