



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/146557

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on February 20, 2013, at Alma, Wisconsin. The record was left open for 28 days so that the parties could submit briefs. The petitioner submitted a brief and the agency has indicated that it will not.

The issue for determination is whether the petitioner is entitled to continue receiving medical assistance under the Medicaid Purchase Plan while his appeal of the Social Security Administration's determination that he is not disabled is pending.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Michele M. Hughes
131 W Wilson St
Madison, WI 53703

Respondent:

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

By: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Buffalo County.
2. The petitioner was an ongoing recipient of medical assistance under the Medicaid Purchase Plan.
3. The Western Region for Economic Assistance notified the petitioner on October 15, 2012, that he must complete a renewal application for medical assistance by November 30, 2012.
4. WREA notified the petitioner on November 19, 2012, that it was ending his Family Care and Medicaid Purchase Plan medical assistance benefits as of December 1, 2012, because he failed to complete his renewal application.
5. The petitioner submitted his renewal application somewhere between October 27, 2012, and November 26, 2012.
6. WREA notified the petitioner on November 28, 2012, that in regard to "Health Care:"

You applied on Dec. 22, 2005. Your application was denied. Please see Your Health Care Benefits page to learn more about why.
7. The Health Care Benefits page stated his Family Care was ending because his assets were over the program's limit and because "You are not 65 or older, or blind or disabled." The notice did not specifically indicate that his Medicaid Purchase Plan benefits were ending. Nor did it mention that he had to appeal within 10 days to keep his medical assistance benefits.
8. The Social Security Administration notified the petitioner on August 23, 2012, that he was no longer considered disabled by the Social Security Administration and that he had 60 days to appeal. That notice did not tell him that that decision would supersede a 2005 medical assistance disability decision and cause his MA benefits to end. It did include the following statement concerning medical assistance:

Although you are not eligible for Supplemental Security Income payments, you may be eligible for medical assistance (Medicaid). If you have any questions about eligibility for Medicaid or need assistance, you should get in touch with the county Department of Public Assistance and Social Services.
9. On December 14, 2012, the petitioner requested that the Social Security Administration allow him good cause to appeal its decision to find that he is not disabled. The Social Security Administration allowed him to file his appeal but did not notify him of this in writing.
10. The petitioner appealed WREA's decision to deny his renewal application on January 14, 2013.

DISCUSSION

The background of this matter is rather convoluted. The petitioner has been receiving medical assistance under the Medicaid Purchase Plan since being found disabled in 2005. This program allows those who are disabled under federal disability standards but wish to work to receive medical assistance. Wis. Stat. § 49.472. The petitioner never sought federal SSI benefits until May 2012, when his father determined that it would be helpful if he could become eligible for the federal stipend in case he needed it. Once he applied for federal benefits, the Social Security Administration reviewed his disability and on August 23, 2012, determined that he was not disabled. That decision told him that if he wished to appeal he must do so within 60 days. He and his father determined that he did not need the monthly stipend, and, assuming that the federal decision would not affect his state medical assistance benefits, did not appeal. On October 15, 2012, the Western Region for Economic Assistance notified him that he must complete a renewal application for medical assistance by November 30, 2012. It is unclear exactly when he did so. He contends he submitted it on October 27, 2012, but WREA did not stamp a date on it until November 26, 2012. Regardless, the application was filed on time, so what particular date between October 27 and

November 26 it was received has no bearing on this case. Nor, because the renewal application was sent on time, does WREA's November 19, 2012, notice to the petitioner indicating that his benefits would end because he failed to file his renewal application have any bearing on this case..

The petitioner's assumption that the Social Security Administration's finding would not affect his medical assistance was wrong. A medical assistance finding of disability must be in accordance with federal disability standards, and federal Social Security Administration disability findings are binding on state agencies. *See* Wis. Stat. § 49.47(4)(a)4. This generally means that when the Social Security Administration determines that a person is disabled, any state medical assistance he receives that is based upon his disability also ends. On November 28, 2012, WREA notified the petitioner of the following in regard to "Health Care:

You applied on Dec. 22, 2005. Your application was denied. Please see Your Health Care Benefits page to learn more about why.

The Health Care Benefits page stated his Family Care was ending because his assets were over the program's limit and because "You are not 65 or older, or blind or disabled." The notice did not specifically indicate his Medicaid Purchase Plan benefits were ending. Nor did it mention that the petitioner had to appeal within 10 days to keep his medical assistance benefits. The petitioner and his father, concerned about the November 19, 2012, notice indicating his benefits would end, called the Department to determine why they were ending. The worker explained that he was no longer eligible because the Social Security Administration had determined that he was not disabled. On December 14, 2012, he requested that the Social Security Administration allow him good cause to appeal its decision to find that he is not disabled. It accepted his appeal, but it did not notify him of this in writing, which his attorney claims is its normal practice. He did not appeal WREA's decision to deny his renewal application until January 14, 2013.

The petitioner contends that the notices ending medical assistance were defective and that those benefits should be reinstated and continue as until the Social Security Administration makes a final decision concerning whether he is disabled. I will consider the second prong of this argument first. There is an exception to the rule that an unfavorable Social Security Administration decision must end medical assistance benefits based upon a disability. HCFA State Medicaid Guideline 3272.2, a federal policy that the Department acknowledged is binding on the state in *Final Decision No. MAP-69/83285*, states in part:

If an individual receiving Medicaid based upon disability is determined by SSA not to be disabled under the SSI disability standard, and he or she is not eligible for Medicaid on some other basis, such a recipient is nonetheless entitled to receive continued Medicaid coverage if he or she timely appeals the SSA disability determination pursuant to the SSA appeals process. Such an appeal is considered timely if filed within the time limit established in SSA regulations, and is sufficient to entitle the recipient to continued Medicaid...

...Medicaid may not be terminated until a decision is made after the [disability] hearing ... A decision after the hearing occurs when the Medicaid recipient has no right to further administrative appeal, and the SSA decision accordingly is the final administrative decision.

Although the Department issued *Final Decision No. MAP-69/83285* in 2007, it still has not updated the policies in the *Medicaid Eligibility Handbook* to reflect it. As a result, the agency was unaware of it. The question is whether it applies to the petitioner's matter. It does not.

HCFA 3272.2 allows benefits to continue if a person "timely appeals" the disability determination. It goes on to specify when an appeal is considered timely: "Such an appeal is considered timely if filed within the time limit established in SSA regulations." As the petitioner's attorney acknowledges, SSA regulations set this time limit at 60 days. It is true that in certain circumstances one can obtain permission from the agency to file an appeal beyond the 60-day deadline, but that does not change that the

regulations set the deadline at 60 days. Because medical assistance benefits are continued only if the person appeals the SSA decision within the 60 days set in the regulation, the petitioner must demonstrate that he did in fact file his SSA appeal within 60 days. It is uncontested that Social Security notified him on August 23, 2012, that his benefits would end and that he filed his appeal on December 14, 2012, which is 113 days later. Therefore, he could not continue to receive medical assistance benefits while he is appealing the SSA decision.

As for the notices, the November 19, 2012, notice is irrelevant because the petitioner filed his renewal application on time and thus a notice indicating that he had not no longer has any bearing on the outcome. The relevant notice is the November 28, 2012, notice. Because the petitioner had been receiving medical assistance benefits, the notice should comply with Wis. Admin. Code, § DHS 103.09(4), which states:

The agency shall give the recipient timely advance notice and explanation of the agency's intention to terminate MA. This notice shall be in writing and shall be mailed to the recipient at least 10 calendar days before the effective date of the proposed action. The notice shall 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.

The November 28, 2012, notice is defective because it merely states that the petitioner's application is being denied when in fact the benefits were being discontinued. Because it is written as a denial, it did not give him 10 calendar days' notice before ending his benefits. It was also confusing because it seemed to indicate that his 2007 application was being denied. The question is whether the notice's defects give the petitioner the right to have his benefits reinstated upon the issuance of this decision.

A defective notice can be cured if it is supplemented in such a way as to give him the notice he needs to challenge the benefits. In *Kocher v. DHSS*, 152 Wis. 2d 170 at 180 (1989), the court held that although the notice was defective the petitioner suffered no prejudice because the "notice was supplemented prior to the termination of benefits, and thus [he] received proper notice in a timely manner." The petitioner in the matter before me called the agency on the day the that notice was sent out. The agency worker explained why his benefits were ending and sent him an appeal form. This information was sufficient to allow him to understand what the specific reason for the denial was and how to appeal it. It did not tell him under what circumstances his benefits would continue, but the petitioner became aware of this right and raised his objections at the hearing. Once at the hearing, the petitioner presented relevant evidence and made relevant arguments. Although the notice was defective, I saw no evidence that it hindered his ability to do either. The petitioner's attorney argues that until a satisfactory notice is sent out, the agency's action is invalid, even if a hearing is held. I disagree. A notice is meant to ensure that a person can properly exercise all the rights due to him. The petitioner has done so.

That said, the agency did incorrectly end his benefits pending the appeal. Federal and state medical assistance law holds that a person's medical assistance benefits shall not be "suspended, reduced, or discontinued until a decision is rendered after the hearing" if benefits end less than 10 days after the agency notifies the recipient of his appeal rights. Wis. Stat. § 49.45(5)(b)2; 42 CFR 431.231(c). But § 49.45(5)(b)2 also states that "medical assistance payments made pending the hearing decision may be recovered by the department if the contested decision...is upheld." As explained above, the agency's decision that the petitioner is not entitled to medical assistance because he is not disabled is being upheld. It is true that the agency was unaware that if he had filed an appeal of the Social Security Administration decision within 60 days his benefits would have continued, but this is irrelevant because he did not file that appeal within that timeframe. Because this decision is upholding the agency, if the petitioner's benefits had continued, the agency would have had the right to recover them. What this means that although the agency should have continued the petitioner's benefits while his state administrative appeal was pending, now that the decision has been issued, he no longer is entitled to them. Because he is no

longer entitled to them, I cannot order the agency to provide them at this point. Therefore, I find that unless he convinces the Social Security Administration to reverse its decision, he is not entitled to any medical assistance benefits that depend upon being disabled.

CONCLUSIONS OF LAW

The petitioner is not entitled to receive medical assistance under the Medicaid Purchase Plan while he appeals the Social Security Administration's finding that he is not disabled because he did not appeal that finding within 60 days.

THEREFORE, it is

ORDERED

The petitioner's 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 Madison,
Wisconsin, this 5th day of April, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on April 5, 2013.

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