



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]

DECISION

BCS/146681

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed January 15, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 12, 2013, at Milwaukee, Wisconsin.

The issues for determination are whether jurisdiction is present to reach the merits of the petitioner's appeal with respect to the Core Plan waitlist and whether the agency has properly acted upon petitioner's MA application filed on February 27, 2012.

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: Katherine May

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has been living at the Center for Veterans Issues since approximately January 2011.
3. Since January 2011 petitioner has named an authorized representative for MA purposes.

4. Petitioner filed this appeal to request that his position on the BadgerCare Plus Core Plan waitlist because he claims that his authorized representatives failed to act correctly on his behalf causing his position on the waitlist to drop.
5. Petitioner filed another application for MA on February 27, 2012. No notice of decision was issued to petitioner regarding that application.

### DISCUSSION

The first issue here is whether jurisdiction is present to reach the merits of the petitioner's appeal with respect to the waitlist. Jurisdiction is available to review a denial, termination or reduction of MA. See, Wis. Adm. Code §HA 3.03(1). There is also jurisdiction when there is a failure to act on an application with reasonable promptness or where a hearing is required by state or federal law or department policy. Wis. Adm. Code §§HA 3.03(1)(b) and 3.03(4). Petitioner's argument that his authorized representative failed to act on his behalf causing his position on the waitlist to drop is both unsupported by any evidence beyond his general allegation and is not an issue which provides me jurisdiction. Accordingly, jurisdiction is not present because it is not a matter within the statutory grant of the subject matters that I am authorized to review.

The second issue is whether the agency has acted upon his February 27, 2012 application. All applications for BC that are received by an agency must be processed and eligibility approved or denied as soon as possible but no later than 30 calendar days from the filing date. This includes issuing a notice of decision. See *BadgerCare Eligibility Handbook*, §25.7.1 and *Medicaid Eligibility Handbook*, §2.7.1. No notice has been issued to date regarding his MA application from February 2012. Based on the foregoing, I find that the agency has failed to meet its burden to show that it acted correctly. I am going to remand the matter so that petitioner's MA eligibility can be redetermined back to the original filing date of February 27, 2012 and to issue him a notice regarding that redetermination.

### CONCLUSIONS OF LAW

1. Jurisdiction is not present to review petitioner's appeal regarding his authorized representatives' actions because it is not a matter within the statutory grant of the subject matters authorized for review by this administrative law judge.
2. The agency has not met its burden to show that the agency correctly processed petitioner's application for MA made on February 27, 2012.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the county agency with instructions to: (a) re-process the application as of the filing date of February 27, 2012, testing him for all available MA programs (b) issue written notice to petitioner, and (c) issue any benefits accordingly if he is eligible. These actions are to be completed within 10 days of the date of this Decision. In all other respects, the petition for review herein 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 7th day of March, 2013

---

\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 7, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability