



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/146732

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marathon County Department of Social Services [“County”] in regard to Medical Assistance [“MA”] a Hearing was held via telephone on February 26, 2013. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: FOO-146731.

The issue for determination is whether it was correct to discontinue petitioner’s MA effective December 1, 2012.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Maikou Yang, ESS
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is 22 years old.

2. At the start of September 2012 petitioner left her children in Wisconsin in the care of relatives and a friend and went to Minnesota to help take care of her dying grandmother; she found employment and stayed in Minnesota continuously for about 1 & ½ month; at the beginning of November 2012 she started to come back to Wisconsin on the weekends while maintaining her employment in Minnesota 3 days per week (Tuesday, Wednesday; Thursday); petitioner returned to live in Wisconsin in February 2013 after her grandmother passed away.
3. The County sent petitioner an *About Your Benefits* Notice dated October 29, 2012 informing her that her MA would end effective December 1, 2012 because she “does not live in Wisconsin.”

DISCUSSION

A person must be a resident of the state in order to be eligible for MA in that state. 42 C.F.R. § 435.403(a) (2011); Wis. Stat. § 49.47(3)(a) (2011-12); Wis. Admin. Code § DHS 103.03(3)(b) (December 2008); *Medicaid Eligibility Handbook* [“MEH”] 6.1.1.

The County may not deny or terminate a resident’s MA eligibility because of that person’s temporary absence from Wisconsin if the person intends to return when the purpose of the absence has been accomplished (unless another state has determined that the person is a resident there for purposes of Medicaid). 42 C.F.R. § 435.403(j)(3) (2011). Once established, Wisconsin residence is retained until abandoned. Being out-of-state, in and of itself, is not abandoning residence. Residence is not abandoned when an MA group or group is temporarily out-of-state. MEH 6.5.1. Temporary absence ends when another state determines the person is a resident there for Medicaid purposes. MEH 6.5.2.

Based on the evidence in the record of this matter it must be concluded that petitioner intended to return to Wisconsin after she was done helping to care for her dying grandmother in Minnesota. Further, there is no evidence in the record of this matter that Minnesota (or any state other than Wisconsin) has determined that the person is a resident for purposes of Medicaid. Therefore, it was not correct to discontinue petitioner’s MA effective December 1, 2012.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to discontinue petitioner’s MA effective December 1, 2012.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, that the County not discontinue petitioner’s MA effective December 1, 2012, and that, within 10 days of the date of this Decision, the County issue all MA benefits for which petitioner is otherwise eligible (and which have not already been issued) retroactive to December 1, 2012.

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 March, 2013

\sSean P. Maloney
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 5, 2013.

Marathon County Department of Social Services
Division of Health Care Access and Accountability