



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCC/146913

PRELIMINARY RECITALS

Pursuant to a petition filed January 25, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Columbia County Health & Human Services [“County”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on March 27, 2013. At petitioner’s request a Hearing scheduled for February 27, 2013 was rescheduled.

The issue for determination is whether the Division of Hearings and Appeals [“DHA”] has jurisdiction to hear the merits of this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Becky J. Wegner, ESS
Columbia County Health & Human Services
2652 Murphy Rd
PO Box 136
Portage, WI 53901

OTHER PERSON PRESENT:

[REDACTED], petitioner’s sister-in-law

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County.
2. A notice dated October 15, 2012 and entitled *About Your Benefits* was sent to petitioner; that notice informed him that his enrollment in the MA BadgerCare Plus Core plan ["MA Core"] would end on November 1, 2012; the notice also informed petitioner of his appeal rights and of the process for requesting a Hearing, including the 45-day time limit for requesting a Hearing.
3. Petitioner did not request a Hearing concerning the November 1, 2012 ending of his MA Core until January 25, 2013; his request for a Hearing was made by way of a *Request For Fair Hearing* form dated January 24, 2013 and received by DHA on January 28, 2013 via U.S. Mail postmarked January 25, 2013.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning MA Core is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d) (2011); Wis. Stat. § 49.45(5)(a) (2011-12); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (September 2001); *BadgerCare Plus Eligibility Handbook* ["BC+ Handbook"] 29.2.; *Income Maintenance Manual* ["IMM"] 3.3.2. A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (September 2001).

In this case, the action being appealed is the November 1, 2012 ending of petitioner's MA Core. Petitioner's request for a Hearing was not filed until January 25, 2013. See, Wis. Admin. Code §§ HA 3.05(2)(a) & 3.05(3)(c) (September 2001). This is well outside of the allowable 45 days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner testified that he did not ask for a Hearing sooner because he became ill at the end of October 2012 ("on or about 10/30/12"), was found unconscious on December 6, 2012, and was hospitalized from December 6, 2012 to December 22, 2012. See, Exhibit #1. Petitioner's circumstances re sympathetic, however they do not create jurisdiction where none otherwise exists.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this matter.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 28th 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 28, 2013.

Columbia County Health & Human Services
Division of Health Care Access and Accountability