



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MQB/147299

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on April 17, 2013, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Nancy Randall

Polk County Department of Social Services  
100 Polk County Plaza, Suite 50  
Balsam Lake, WI 54810

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.
2. The petitioner's QMB review was due by September 30, 2012. Instead of completing a review, she filed a new application on September 13, 2012.

3. The county agency requested that the petitioner verify her checking account. When it did not receive this verification, it closed the case on September 30, 2012.
4. The agency denied the petitioner's new application for QMB benefits on October 26, 2012. That notice was sent to a closed post office box but was not returned to the county agency. The post office indicated that it forwarded the petitioner's mail to her home address.
5. On November 28, 2012, the petitioner's daughter inquired about the petitioner's benefits closing.
6. The county agency resent all of the petitioner's notices to her new mailing address on November 29, 2012.
7. The petitioner reapplied for QMB on December 3, 2012, and was found eligible as of January 1, 2013. She seeks eligibility retroactive to October 1, 2012.
8. The petitioner appealed the agency's action on February 11, 2013.

### DISCUSSION

Qualified Medicare Beneficiary (QMB) benefits pay Medicare premiums, deductibles and co-payments for eligible recipients of SSI. *Medicaid Eligibility Handbook*, § 32.6. The petitioner was supposed to complete a review of her benefits last fall but filed new application instead. The agency asked her verify a checking account, and when she did not do so, it closed her case on September 30, 2012. Then on October 26, 2012, it notified her that her renewal application was denied. Recipients must appeal the negative actions within 45 days of the notice or the date that the action takes effect, whichever is later. Wis. Admin. Code, § HA 3.05(3). If an appeal is late, the Division of Hearings and Appeals loses its legal authority to consider the matter. The petitioner never filed an appeal until February 11, 2013.

She contends that she did not receive the October 26, 2012, notice because it was sent to a post office box that had closed a year earlier. Even though her post office box closed, it is unclear why she did not receive the notice from the agency. It was returned to the agency, and the post office indicated that it forwarded her mail. In addition, several similar notices were sent to her, so her implied argument is that all of them were lost, which is unlikely. Regardless, if she did not get the information, it was her fault because she did not notify the agency of her new mailing address. Moreover, after her daughter inquired about her mother not receiving benefits, the agency resent all of the notices on November 29, 2012. February 11, 2013, the date she finally did appeal is considerably more than 45 days past the time she received these notices. Based upon this, I find that her appeal is late, and I have no jurisdiction to consider it.

### CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner's appeal because it is untimely.

**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 18th day of April, 2013

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\sMichael D. O'Brien  
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 April 18, 2013.

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