



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/147408

PRELIMINARY RECITALS

Pursuant to a petition filed February 15, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sauk County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on March 13, 2013, at Baraboo, Wisconsin.

The issue for determination is whether the petitioner's appeal of the October 1, 2012 discontinuance of her QMB benefits is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Michelle Hirschinger, ESS
Sauk County Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County who received QMB benefits.
2. On August 6, 2012, petitioner participated in a telephone review of her FS and QMB benefits.

3. The petitioner did not timely complete her QMB review.
4. The county agency sent a September 18, 2012 Notice of Decision to the petitioner at her correct address stating that effective October 1, 2012 her QMB benefits would discontinue due to failure to timely complete her QMB review. See Exhibit 1.
5. The petitioner was unable to establish with any reliable evidence that she had problems with her mail delivery.
6. The petitioner mailed a February 12, 2013 appeal to the Division of Hearings and Appeals (DHA) which was postmarked on February 15, 2013, and was received at DHA on February 18, 2013.
7. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the October 1, 2012 QMB discontinuance prior to February 15, 2013.
8. The petitioner re-applied for QMB during December, 2012 and was approved as of February 1, 2013.

DISCUSSION

An Administrative Law Judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. **An appeal of a negative action by a county agency concerning Medical Assistance (MA) or QMB must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0.** An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the October 1, 2012 discontinuance of petitioner's QMB benefits due to failure to timely complete her review. See Exhibit 1.

During the March 13, 2013 hearing, petitioner contested that she received the September 18, 2012 notice (Exhibit 1) which stated her QMB would discontinue as of October 1, 2012. However, the county representative indicated that Exhibit 1 was not returned as undeliverable to the county agency. Furthermore, petitioner was unable to establish with any reliable testimony or evidence that she had problems with her mail delivery. There was also no evidence that anyone at the county agency attempted to prevent the petitioner from filing a timely appeal at DHA.

During the March 13, 2013 hearing, petitioner was not able to provide any valid reason or good cause for not filing an appeal with DHA during the 45 day period (until November 16, 2012) after receiving the September 18, 2012 notice discontinuing her QMB benefits effective October 1, 2012. Accordingly, for the above reasons, I conclude that because petitioner did not appeal the October 1, 2012 QMB discontinuance within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the October 1, 2012 QMB discontinuance issue in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the October 1, 2012 discontinuance of petitioner's QMB benefits, as the appeal is untimely.

THEREFORE, it is

ORDERED

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 7th day of May, 2013

\sGary M. Wolkstein
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
Internet: <http://dha.state.wi.us>

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

Sauk County Department of Human Services
Division of Health Care Access and Accountability