



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/148427

PRELIMINARY RECITALS

Pursuant to a petition filed March 27, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance, a hearing was held on April 22, 2013, at Manitowoc, Wisconsin.

The issue for determination is whether the Department erred in its decision to backdate MA-NH eligibility to November 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lori Baranczyk

Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. In June 2012, petitioner was admitted to a nursing home.

3. On 10/3/12 petitioner applied for nursing home MA. The agency determined she was over assets due to life insurance policies. Petitioner's POA informed agency that she would cash in policies.
4. POA informed agency on 11/5/12 that she was in process of cashing in life insurance policies.
5. POA called again on 11/8/12 with similar information. Agency informed POA that MA application would expire after 30 days and will need to re-apply after that.
6. The policies were cashed in in December 2012 and petitioner was under assets as of December 2012.
7. On 12/17/12, POA visited agency to re-apply for NH-MA. The agency requested documentation of the cashing in of the life insurance.
8. In February 2013, the agency decided to grant MA retroactive to November 1, 2012 based on the POA's efforts to cash in the life insurance beginning in that month and the assets being unavailable.
9. Petitioner filed a Request for Fair Hearing Form with DHA on April 1 in which she claimed an effective date of adverse action of November 1, 2012. The form specified the action as the delay of a medical assistance program level of care determination. Handwritten notations indicated "Delay of benefits" and indicated that "according to the nursing home where [petitioner] currently resides the Economic Support Worker misplaced [certain submitted documents]. This delayed the application process and therefore eligibility by several months."

DISCUSSION

Petitioner stated at hearing that she was told that MA was granted in December. This appears to be incorrect based on the record. Petitioner did not provide a copy of a notice from which it appealed. I am not convinced that there is a timely appeal here. Petitioner states the effective date of the adverse action as November 1, 2012. This is the date to which the Department backdated eligibility. I presume that there was a notice issued when the Department granted eligibility in February, but petitioner did not provide a copy of such notice. A hearing officer 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 MA must be filed within 45 days of the date of the action. See Wisconsin Stat. § 49.45(5); *Income Maintenance Manual* § 3.3.1.

But, assuming that petitioner intended to appeal the decision to backdate only to November 1, 2012 and not to an earlier date, petitioner offered no evidence to support this position. The representative for petitioner appeared entirely unprepared and without material facts and background. There was no case presented or articulation of a specific issue for appeal or basis therefor.

The record presented by the Department supports the idea that petitioner was ineligible due to being over assets. But, petitioner offered no rebuttal at all and seemed unwilling to suggest any error on behalf of the Department.

CONCLUSIONS OF LAW

The Department did not err in its decision to backdate MA eligibility to 11/1/12.

THEREFORE, it is

ORDERED

That this 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 12th day of June, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
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 June 12, 2013.

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