



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MQB/148473

PRELIMINARY RECITALS

Pursuant to a petition filed April 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on April 25, 2013, at Milwaukee, Wisconsin.

NOTE: On April 26, 2013, an order was mistakenly issued in this case, indicating that Petitioner had abandoned his appeal. That April 26, 2013 order is hereby vacated and replaced by this decision.

The issues for determination are whether Petitioner's appeal is timely and whether the Milwaukee Enrollment Services correctly denied Petitioner's request to backdate his benefits to January 1, 2013.

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: Katherine May, HSPC
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 30, 2012, Milwaukee Enrollment Services (the agency), sent Petitioner a Notice of Proof Needed, requesting verification of income from Joan Ashley by December 10, 2012. (Exhibit 4)

3. Petitioner did not provide the requested verification by December 10, 2012, because he thought he provided all the necessary information when he completed his renewal by phone on November 29, 2012. (Testimony of Petitioner)
4. On December 14, 2012, the agency sent Petitioner a notice indicating that as of January 1, 2013, his MAPP and QMB benefits would be ending, because he did not provide the requested proof. (Exhibit 5)
5. On March 8, 2013, Petitioner submitted to the agency the requested income verification. The agency accepted the letter on March 11, 2013. (Exhibits 6 and 7)
6. Petitioner's MAP benefits were open effective March 1, 2013 and his QMB benefits were open effective April 1, 2013. (Exhibits 2 and 3; Testimony of Ms. May)
7. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeal on April 3, 2013. (Exhibit 1)

DISCUSSION

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. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1.

The agency contends that Petitioner's appeal is untimely, because the notice terminating his benefits was dated December 14, 2013, and his appeal was filed on April 3, 2013, well past the 45 day deadline. However, Petitioner is appealing the agency's refusal to backdate his QMB benefits to January 1, 2013. This refusal to backdate benefits did not occur until about March 18, 2013. (See Case Comments, Exhibit 7) As such, Petitioner's April 3, 2013 appeal was filed well within the 45 day time limit.

It is the agency's contention that "policy" does not allow the backdating of QMB benefits. However, the Medicaid Eligibility Handbook (MEH) contains the following information and instructions:

32.8.1 QMB Backdating

Occasionally, the benefits of a person who is eligible for QMB did not begin on the first of the following month as they were supposed to. This can occur if:

1. The eligibility process was not completed within 30 days.
2. Certification of eligibility was not completed.
3. A fair hearing decision has ordered backdated QMB benefits.

To backdate QMB benefit, complete an F-10110 (formerly DES 3070) certification form and return to:

1. Mail:
 HP Enterprise Services
 P.O. Box 7636
 Madison, WI 53707

2. Fax: (608 221-8815)

This certainly appears to be a case where certification of eligibility was not completed because Petitioner did not submit his income verification when it was first requested at the time of his renewal, but did so at a later date. §32.8.1 of the MEH clearly anticipated the backdating of benefits under such circumstances. (It should be noted that there is an on-line link to form F-10110 in the online Process Help and MEH manuals.)

CONCLUSIONS OF LAW

1. Petitioner's appeal was timely.
2. The agency incorrectly denied Petitioner's request to backdate his QMB benefits to January 1, 2013.

THEREFORE, it is**ORDERED**

That the agency backdate Petitioner's QMB benefits to January 1, 2013, if he is otherwise eligible for such benefits. The agency shall take all administrative steps to make this happen within 10 days of this decision.

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 Milwaukee,
Wisconsin, this 6th day of May, 2013.

\sMayumi M. Ishii
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 May 6, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability