



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/148720

PRELIMINARY RECITALS

Pursuant to a petition filed April 13, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on June, 2013, at Milwaukee, Wisconsin.

The issue for determination whether petitioner's appeal was timely filed.

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 June 11, 2012, Milwaukee County sent Petitioner a notice indicating that as of July 1, 2012, she would need to pay a \$65.00 monthly premium to keep her BadgeCare+ benefits. The notice was sent to Petitioner at [REDACTED] (Exhibit 4, pgs. 19-24)

3. On July 18, 2012, Milwaukee County sent Petitioner a notice indicating that as of August 1, 2012, she would not be enrolled in BadgeCare+, because she did not pay her premium. The notice further advised Petitioner that if she wanted to continue her healthcare benefits to pay the premium right away, or she would not be allowed to enroll in BadgeCare for the next 12 months. The notice was sent to Petitioner at [REDACTED] (Exhibit 4, pgs. 25 and 26)
4. Petitioner did not pay the premium. (Testimony of Petitioner)
5. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on April 13, 2013.

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 concerning Medical Assistance must be filed within 45 days of the date of that action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1.7 C.F.R., § 273.15(g). A negative action can be the denial of an application, the reduction of benefits, or as in this case, the termination of an ongoing case.

In the case at hand, the date of negative action is August 1, 2012, when Petitioner was effectively disenrolled from BadgerCare+. The petitioner's appeal was filed on April 13, 2013, 255 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Petitioner argues that the time limits should be tolled because she did not receive the notices advising her of the need to pay her premium. Petitioner asserts that she must not have received the notices because she moved.

It is undisputed that the [REDACTED] address was Petitioner's correct address until on or about July 26, 2012. According to the Case Comments, Petitioner did not report her change of address until August 3, 2012. (See Exhibit 4, pg. 5) It is undisputed that the agency sent its notices regarding the premium due and Petitioner's termination from BadgerCare+ to the [REDACTED] address prior to Petitioner's move on July 26, 2012 and prior to her reported change of address.

Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, "summons, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage." Further, "the mailing of a letter creates a presumption that the letter was delivered and received." State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.w.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613.

Petitioner has provided no explanation for why she would not have received the subject notices. On the contrary, the notices were correctly addressed. Further, Petitioner testified that she moved to [REDACTED] Avenue around July 26, 2012. This was well over a month after Milwaukee County sent her the notice concerning the premium due and eight days after the county sent Petitioner the notice advising her of the termination of her benefits on July 18, 2012. It should be noted that Petitioner testified to receiving the Six Month Report Form that the agency sent to her on July 21, 2012, three days after the agency sent her the notice regarding the termination of her benefits. (See also Exhibit 5; and testimony of Ms. May) Based upon the foregoing, I find that Petitioner has not provided sufficient evidence to rebut the presumption that she received the subject notices and I find that her appeal is untimely.

CONCLUSIONS OF LAW

Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the petition 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 Milwaukee,
Wisconsin, this 2nd day of July, 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 July 2, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability