



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/148810

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on May 13, 2013, at La Crosse, Wisconsin.

The issue for determination is whether the petitioner's appeal of the December 1, 2012 discontinuance of his BadgerCare Plus benefits due to failure to pay his BC premiums 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: Bob Uebele, ESS

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County who resides with his wife and their two minor children. The petitioner and his family received BadgerCare (BC) Plus benefits.

2. The county agency sent a November 19, 2012 Notice of Decision to the petitioner at his correct address stating that effective December 1, 2012 his BadgerCare Plus benefits would discontinue and he and his wife would be placed in restrictive re-enrollment, due to his failure to timely pay his BC premium. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) within 45 days of the notice's effective date (deadline of January 16, 2013). See Exhibit 1.
3. Petitioner admitted that he received the November 19, 2012 notice (Exhibit 1).
4. The petitioner mailed an appeal to the Division of Hearings and Appeals (DHA) which was postmarked on April 15, 2013, and received at DHA on April 18, 2013.
5. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the December 1, 2012 discontinuance prior to April 15, 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) 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 December 1, 2012 discontinuance of petitioner's BadgerCare Plus benefits (and placement in restrictive re-enrollment), due to failure to timely pay his required BC premium.

During the May 13, 2013 hearing, petitioner admitted that he received the November 19, 2012 notice which stated his BC Plus benefits would discontinue as of December 1, 2012 and that he would be placed in 12 months of BC restrictive re-enrollment. There was no evidence that anyone at the county agency attempted to prevent the petitioner from filing a timely appeal at DHA.

During the May 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 January 16, 2013) after receiving the November 19, 2012 notice discontinuing his BC benefits effective December 1, 2012. In fact, the petitioner admitted that his appeal was untimely, but explained that he had made some phone calls to the county agency about his case. Such phone calls to the county agency do not establish good cause for a late appeal. Accordingly, for the above reasons, I must conclude that because petitioner did not appeal the December 1, 2012 BC Plus discontinuance within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the December 1, 2012 BadgerCare discontinuance or restrictive re-enrollment issues in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the December 1, 2012 discontinuance or restrictive re-enrollment of petitioner's BadgerCare Plus 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 11th day of July, 2013

\sGary M. Wolkstein
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 11, 2013.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability