



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/148837

PRELIMINARY RECITALS

Pursuant to a petition filed April 18, 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 May 15, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal 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: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received BadgerCare Plus (BCP) benefits for her household with a required monthly premium affective December or 2012.
2. The petitioner failed to pay her December BC premium.

3. The respondent sent a November 12, 2012, notice to petitioner at her correct address indicating that, due to an increase in household income, petitioner was required to pay a monthly premium in the amount of \$135.00. Exhibit 2. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) by January 16, 2013. Exhibit 2.
4. The respondent sent a November 27, 2012, notice to petitioner at her correct address indicating that her BCP enrollment would cease as of January 1, 2013, as she was able to get health insurance through her employer. Exhibit 2. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) by February 18, 2013. Exhibit 2.
5. The respondent sent a January 25, 2013, notice to petitioner at her correct address indicating that she was ineligible for BCP benefits as she was placed in restrictive reenrollment for a period of 12 months as a result of her failure to pay her premium for December, 2012. Exhibit 2. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) by March 12, 2013. Exhibit 2.
6. None of the notices identified in Findings of Fact 3, 4, or 5 were returned to respondent as undeliverable.
7. The petitioner did not mail her BCP appeal to the Division of Hearings and Appeals (DHA) until April 18, 2013, and DHA received petitioner's appeal on April 19, 2013. Exhibit 1.
8. There is no evidence in the hearing record that petitioner requested a DHA appeal prior to April 18, 2013.

DISCUSSION

An administrative law judge (ALJ) or 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 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. 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 January 1, 2013 placement of petitioner into restrictive reenrollment. See, Exhibit 2.

During the May 15, 2013, hearing, petitioner conceded that she had received notices, but was instructed by respondent's employee to simply not pay the December premium since she would be receiving benefits through her employer. However, while this could provide an explanation for a failure to pay her premium, it does not explain why petitioner waited approximately 83 days to mail her appeal to the Division of Hearings and Appeals (DHA). The untimely filing is fatal to petitioner's appeal.

During the May 15, 2013, hearing, petitioner did not provide any valid reason or good cause for not filing an appeal with DHA during the 45 day period after receiving the January 25, 2013, notice regarding her placement into restrictive re-enrollment. Instead, the petitioner delayed for almost three months to file her appeal to DHA. Accordingly, for the above reasons, I conclude that because petitioner did not appeal the January 25, 2013 BCP restrictive re-enrollment (effective January 1, 2013) notice within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address this matter.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the January 25, 2013 BCP restrictive re-enrollment (effective January 1, 2013) notice, 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 5th day of July, 2013

\sPeter McCombs
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 5, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability