



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTS/148960

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 2013, under Wis. Stat. § 227.42, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on May 21, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether retroactive Caretaker Supplement benefits were correctly denied.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Paul Frederickson
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 # ) is a resident of Milwaukee County.
2. On or about September 7, 2012, the Social Security Administration granted petitioner's request for reconsideration, and approved petitioner's receipt of retroactive SSI benefits for the months of January, 2012 through September, 2012.

3. Petitioner sought to apply for Caretaker Supplement (CTS) benefits in September, 2012, October, 2012, and January, 2013, but was verbally informed that she was not eligible due to her receipt of SSDI payments, as opposed to SSI payments.
4. In April, 2013, petitioner completed and submitted an application for CTS benefits. This was denied per notice dated April 24, 2013. The notice indicated that, "To get this benefit, the parents in the home must be getting SSI and caring for their dependent children. You do not meet these rules." Exhibit 3.

DISCUSSION

The first step in determining CTS eligibility is a determination as to whether a CTS assistance group exists. *SSI Caretaker Supplement Handbook (CTSH)*, §3.1.2. A specific child is identified as the target child and then the adult(s) and other child or children who are part of the CTS case and for whom CTS benefits may be added to the parent's SSI payment are identified. Once a target child is identified all parents and siblings of that child in the household are included in the filing unit. This is defined as the assistance group. *Id.*; also see *CTSH*, §3.1.9. A child cannot be a recipient of SSI payments and generate a CTS benefit. *Id.* §3.1.4.

To be eligible for the CTS payments the following criteria must be met: (1) the parent must be a "custodial parent," (2) the parent must be an SSI recipient; (3) the child or children must meet the financial and non-financial criteria for AFDC as it existed on July 16, 1996; and (4) the child or children must not receive SSI payments themselves. See Wis. Stat. §49.775(2). A "custodial parent" is defined at Wis. Stat. §49.141(1)(b) as "a parent who resides with that child and, if there has been a determination of legal custody with respect to the dependent child, has legal custody of that child." The respondent claims that petitioner failed to satisfy criterion 2, above; the record does not reveal whether or not respondent assessed petitioner's eligibility pursuant to criteria 1, 3, and 4.

During the May 21, 2013, hearing, the petitioner argued that she had sought CTS benefits as early as September, 2013. Additionally, she provided documentation demonstrating that in September of 2012 she was awarded retroactive SSI benefits from January, 2012 through September, 2012. According to petitioner she attempted to pursue CTS benefits, but was informed that she was not eligible, as she was a recipient of SSDI, not SSI. Respondent's testimony reiterated this basis for confusion, and notes that there is no record that petitioner applied for CTS benefits prior to April of 2013. Petitioner responds that she wanted to apply, and sought to do so, but was turned away in September, 2012, October, 2012, and January, 2013. In April petitioner filed a complaint regarding local staff, and was provided an opportunity to meet with a county worker and complete a CTS application. That application was denied due to the fact that petitioner did not receive SSI benefits at that time. There is no indication that the respondent considered backdating.

Backdating eligibility may be allowed in limited circumstances. The *CTSH* states:

...

Another common instance of backdating occurs when a parent with an open CARES case is unexpectedly awarded SSI eligibility to a month earlier than the present month. In this case, the local agency worker may adjust dates in CARES to allow the initial CTS eligibility begin with the first month of SSI eligibility (assuming all CTS criteria were also met by the assistance group). However, backdating to the SSI start date is allowed only when the assistance group has been an open assistance case in CARES for the entire period of backdating. In this case the month of "application for assistance is considered to be the application date of the most recent continuously open case in CARES.

Under no circumstances may CTS benefits be paid for a month during which the assistance group was not an open case in the CARES system.

CTSH, §4.2.

The record before me does not disclose whether or not backdating was considered; instead, it appears that the application denial was based solely on petitioner's status as of the date of application. Petitioner argued that she attempted multiple times to apply for benefits after learning of the retroactive award of SSI benefits, and respondent conceded that Case Comments would not necessarily reflect instances where petitioner met with front desk staff only. I found petitioner's testimony credible for the most part, and largely supported by supporting documentation. See, Exhibit 2. The respondent was unable to identify any provision of law that would prevent retroactive application of petitioner's CTS application, however the record does not indicate whether petitioner's situation would satisfy the mandates of *CTSH* §4.2. As such, I will remand this matter to the respondent to reconsider the CTS application in accordance with the *CTSH*'s direction regarding retroactivity.

CONCLUSIONS OF LAW

Respondent did not consider whether petitioner's CTS application could be backdated due to SSI benefits that were backdated.

NOW, THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent to reconsider petitioner's CTS application in accordance with the *SSI Caretaker Supplement Handbook's* direction regarding retroactivity (*CTSH* §4.2). The respondent's re-determination shall be provided to petitioner, in writing, with notice of attendant appeal rights. All actions required pursuant to this Order shall be completed within ten (10) days following issuance 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 Madison,
Wisconsin, this 13th day of August, 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 August 13, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability