FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

BCS/149140

PRELIMINARY RECITALS

Pursuant to a petition filed May 02, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marathon County Department of Social Services [“County”] in regard to Medical Assistance [“MA”], a Hearing was held on June 18, 2013.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to hear the merits of petitioner's appeal.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Maikou Yang, ESS
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

OTHER PERSON PRESENT:
Xiong Lo, petitioner’s husband

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Marathon County.

2. Petitioner received, via U.S. mail, a written letter *About Your Benefits* notice dated February 22, 2013 informing her that her application for MA BadgerCare Plus ["BC+"] was denied; the notice also informed petitioner of her appeal rights and of the process for requesting a Hearing, including the time limit for requesting a Hearing.

3. Petitioner requested a Hearing by a letter dated May 2, 2013 received by DHA via fax on May 2, 2013.

DISCUSSION

DHA can only hear cases on the merits if has the legal authority to do so. This is known as *jurisdiction*. There is no jurisdiction if an appeal is untimely. An appeal concerning BC+ is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d) (2011); Wis. Stat. § 49.45(5)(a) (2011-12); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (February 2013). A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the action being appealed is the February 22, 2013 denial of petitioner's application for BC+. Petitioner's request for a Hearing was not filed until May 2, 2013. See, Wis. Admin. Code § HA 3.05(3)(c) (February 2013). This is well outside of the allowable 45 days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner testified that she did not request a Hearing earlier because she telephoned the County and was told to send in more paperwork and waited to hear back. This is unfortunate, but does not create jurisdiction where none otherwise exists.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this matter.

NOW, THEREFORE, it is

ORDERED

That 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 19th day of June, 2013

_____

\sSean P. Maloney
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 June 19, 2013.

Marathon County Department of Social Services
Division of Health Care Access and Accountability