



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCB/150086

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Iron County Department of Social Services in regard to Medical Assistance, a hearing was held on July 23, 2013, at Hurley, Wisconsin.

The issue for determination is whether the Department erred in determining that petitioner was not entitled to MA coverage for specific dental services (root canal for [REDACTED]) rendered in April and May 2012.

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: Buelah Garcia

Iron County Department of Social Services
Courthouse
300 Taconite Street
Hurley, WI 54534

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Iron County.

2. Petitioner and her child were members of the BC+ Standard Plan.
3. Petitioner underwent a renewal. There were some processing errors by the agency. During this period the petitioner was disenrolled from MA.
4. During that period of disenrollment, the dental services in question were billed to MA and the Department denied coverage.
5. Petitioner was later found to be eligible for the BC+ Benchmark Plan. The agency backdated Benchmark Plan benefits to April 2012. Notice was sent to petitioner on May 22, 2012 informing her that two children were enrolled in the benchmark Plan and that coverage in that Plan was effective as of April 1, 2012.
6. Petitioner was sent a bill from the provider dated June 4, 2013 for the amount of \$694 which is what caused her to file a request for hearing.
7. Petitioner filed an appeal on June 19, 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 by a county agency concerning MA must be filed within 45 days of the date of the action. See Wisconsin Stat. § 49.45(5). The notice relating to the change to Benchmark Plan and the backdating was sent in May 2012. I cannot consider the merits of that determination. I accept that petitioner and her children were enrolled in that Plan from April 2012 onward.

The dental services in question here occurred in April and May. Petitioner argues that she would not have gotten the services done if she knew that the Standard Plan benefits had ended and that only limited benefits were available. The agency concedes processing errors with regard to the renewal. It certainly appears that the provider submitted the bills for payment by ForwardHealth during the period that the agency had disenrolled petitioner erroneously.

But, I cannot order that the bills be processed under the Standard Plan as petitioner requests. I cannot order that she receive benefits to which she would not otherwise be entitled. She did not appeal the May 2012 notice indicating Benchmark Plan enrollment. I cannot change that now, more than a year after that notice informed petitioner of that change.

But, I can order the Department to arrange with the provider for processing of the bills for the April and May 2012 dates of service under the Benchmark Plan that petitioner should have been properly enrolled in at the time of the services. The fact that these payments were denied was the error of the agency and petitioner only learned of this problem in June 2013. It may be that the Benchmark Plan does not cover the specific services. But the claim should be processed to determine whether it should be covered at all.

I note that there is usually a 365 day limit for the submission of claims. I note to the Department that it appears that this claim WAS, in fact, submitted within that time period and denied on an erroneous basis at that time. I expect that resubmission will be permitted. That said, I have no idea why it took the provider more than a year from the dates of service to inform petitioner that the claims would not be paid. I also do not understand why the provider did not confirm enrollment in the BC+ program

prior to undertaking a significant and expensive procedure. I note that petitioner may wish to review Wis. Admin Code DHS 104.01(b)-(d) (excerpted below).¹

CONCLUSIONS OF LAW

The Department erred in denying payment for the April and May root canal services based on the member not being enrolled. The claim(s) should be processed under the enrollment in the Benchmark Plan.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its County agency to facilitate the resubmission of the April and May 2012 dental claims related to the root canal services for [REDACTED]. The claims shall be processed under the member's Benchmark Plan eligibility to determine whether payment is appropriate. These actions shall be completed within 10 days.

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.

¹ (b) Freedom from having to pay for services covered by MA. Recipients may not be held liable by certified providers for covered services and items furnished under the MA program, except for copayments or deductibles under par. (a), if the patient identifies himself or herself as an MA recipient and shows the provider the MA identification card.

Note: Recipients seeking nonemergency services from noncertified providers are liable for all charges, unless the services were authorized by the department prior to service delivery.

(c) Prior authorization of services. When a service must be authorized by the department in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by the department and the recipient was informed of the recipient's personal liability before provision of the service. In that case the recipient may request a fair hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability.

Note: For example, if a provider does not inform a recipient that a procedure or service requires prior authorization, and performs the service before submitting a prior authorization request or receiving an approval and then submits a claim for services rendered which is rejected, the recipient may not be held liable.

(d) Freedom from having to pay the difference between charges and MA payment. Providers may not charge recipients for the amount of the difference between charge for service and MA reimbursement, except in the case of recipients wishing to be in a private room in a nursing home or hospital, in which case the provisions of s. DHS 107.09 (4) (k) shall be met.

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 4th day of September, 2013

\sJohn P. Tedesco
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 September 4, 2013.

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