



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/150143

PRELIMINARY RECITALS

Pursuant to a petition filed June 18, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Oneida County Department of Social Services in regard to Medical Assistance (MA), a hearing was held on July 17, 2013, at Rhinelander, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

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: Amy Mayo, ES Supr.
Oneida County Department of Social Services
Oneida Avenue
PO Box 400
Rhinelander, WI 54501

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County.
2. The petitioner applied for and was certified as eligible for Badgercare Plus Core Plan (Core) coverage from February 1, 2011, through January 31, 2012. Core is a Wisconsin variant of MA, allowed by waiver from the federal government, for childless adults.

3. Maternity care/birthing expenses are not a covered service under Core, because it is a program for *childless* adults.
4. The petitioner gave birth on November 17, 2011.
5. The petitioner reported the birth by telephone on November 22, 2011. This alerted the Department that she could be eligible for MA for herself, her husband and their child under a different subset of MA – regular BadgerCare Plus (BCP). The Department mailed a BCP application to the petitioner at her correct address on November 30, 2011. The application form directs her to make contact if any of the information entered on the application form is incorrect, and directs her to return a signed form and income verification to the Department no later than December 12, 2011. *See*, Exhibit 2.
6. The petitioner telephoned the Department on December 1, 2011, to inquire about her MA status. She was advised that the Department was waiting for her income verification. Neither the signature page nor the income verification was received by the Department in December 2011.
7. On December 23, 2011, the Department issued written notice of denial of the November 2011 BCP application to the petitioner. (The notice refers to a request to have BCP begin 8/1/2011, which would be the allowable three-month backdating from a November application). The reason given for denial was that the petitioner “did not provide the required proof of your answers to the agency.” *See*, Exhibit 5. It was mailed to her correct address and was not returned to the agency by the Postal Service as undeliverable. The notice also advises the petitioner that any fair hearing request related to this action was due no later than February 7, 2012. *Id.*, p.6.
8. Less importantly to this appeal, the petitioner also let her Core coverage expire. An annual renewal form for Core was mailed to the petitioner on December 12, 2011, with a due date of January 31, 2012. *See*, Exhibit 3.
9. On February 28, 2012, the Department mailed a written notice of negative action to the petitioner at her correct address. That notice advised that the petitioner’s Core coverage had ended February 1, 2012, for failure to complete a renewal. It also repeated that the petitioner was not eligible for BCP, due to failure to sign the application. The notice identifies a deadline for asking for a fair hearing to challenge this result of April 26, 2012. *See*, Exhibit 6.
10. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on June 18, 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. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed **476** days after the date of the February 28, 2012, action, and was even older with respect to the December 23, 2011, BCP denial. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Without the Core plan, no non-disabled, childless adult under age 65 in Wisconsin in 2011 could receive any amount of MA coverage. As a point of information for the petitioner, the section 1115 waiver from the federal government that allows Wisconsin to offer the Core plan to Wisconsin’s residents is found at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html>. Attachment A to the federal waiver document lists the limited services covered by the Core plan. The

second page of Attachment A contains the service category of “prenatal/maternity services,” followed by the instruction, “No coverage.”

Apparently, the MA program did pay some portion of the petitioner’s maternity expense at the hospital where she delivered. On a date unknown in this hearing record, the MA program later realized that a payment error had been made (unclear from the record if the error was by the hospital or by MA), and required the hospital to return the erroneous MA payment. This then caused the hospital to belatedly send the petitioner a bill for maternity services. The petitioner was unhappy with the MA program’s recovery of its incorrect payment from the hospital. However, state code clearly allows the MA program to recover incorrect payments previously made to medical providers. Wis. Admin. Code § DHS 106.04(5).

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is **ORDERED**

That the petition is 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 10th day of September, 2013

\sNancy J. Gagnon
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 10, 2013.

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