



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/150255

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 24, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin in regard to Medical Assistance, a hearing was held on July 15, 2013, at Portage, Wisconsin.

The issue for determination is whether this is a timely appeal.

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: Jean Anton

Care Wisconsin  
2802 International Lane  
PO Box 14017  
Madison, WI 53708

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County.
2. Petitioner has been a member of the Family Care Program.
3. On December 11, 2012, the Department sent notice to petitioner informing her that her cost share for the FC program would be \$527 per month. The notice included appeal rights.

4. On April 24, 2013, the Department sent notice to petitioner informing her that her cost share would be reduced to \$385 per month. The notice included appeal rights.
5. Petitioner had not been paying her cost share and had been accruing a balance that was past due on an ongoing basis since January.
6. On June 25, 2013, petitioner filed a written request for a fair hearing.

### 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.

The June 25 request for fair hearing was untimely as it was filed more than 45 days after the December 11, 2012 notice and the April 24, 2013 notice.

I note that even if the request was filed a few weeks earlier, the issue for hearing would only be the correctness of the determination of the \$385 cost share. Because the overdue amounts stemmed from the December determination, any appeal of the overdue amounts would have required an appeal to be filed by January. As there was no such appeal filed, I would not have addressed the overdue balance even if this matter had gone forward.

### CONCLUSIONS OF LAW

The appeal is not timely.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 15th day of July, 2013

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\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 July 15, 2013.

Care Wisconsin  
Office of Family Care Expansion