



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCC/150509

PRELIMINARY RECITALS

Pursuant to a petition filed July 06, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a telephonic hearing was held on August 07, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of the October 1, 2011 discontinuance of his BadgerCare Core Plan benefits is timely.

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: Belinda Bridges, IM advanced
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County who received BadgerCare (BC) Core Plan benefits for himself as a BC household of one.

2. The Milwaukee Enrollment Services (MES) sent a September 19, 2011 notice to the petitioner at his correct address of record (the county agency at [REDACTED]) that his BadgerCare (BC) Plus Core Plan renewal application must be completed or his BC benefits would discontinue effective October 1, 2011. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) within 45 days of the notice's effective date (November 16, 2011). See Exhibits 1 and 2.
3. The petitioner re-applied for the BC Core Plan during December, 2011, and was placed on the Core plan waiting list. See Exhibit 1.
4. The petitioner mailed an appeal letter to Milwaukee Enrollment Services which was postmarked July 6, 2013, and was received at the Division of Hearings and Appeals (DHA) on July 9, 2013.
5. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the October 1, 2011 BC discontinuance prior to July 6, 2013.

DISCUSSION

An Administrative Law Judge (ALJ) 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.** An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the October 1, 2011 discontinuance of petitioner's BadgerCare Core Plan due to failure to timely complete his required renewal. See Exhibit 1.

During the August 7, 2013 hearing, petitioner alleged unconvincingly that he did not receive the September 19, 2011 notice stating that his BC Core Plan would discontinue as of October 1, 2011 if he did not timely complete his BC renewal application. That notice was sent to the petitioner at the county agency address at [REDACTED]. It was the responsibility of the petitioner to promptly pick up and review his mail. The county representative indicated that petitioner did re-apply for BC Core plan benefits during December 2011, and thus he did receive notice of the discontinuance. There was no evidence that anyone at MES attempted to prevent the petitioner from filing a timely appeal at DHA. The petitioner was not able to establish any valid reason or good cause for not filing an appeal with DHA during the 45 day period (until November 16, 2011) after receiving the September 19, 2011 notice discontinuing his BC Core benefits effective October 1, 2011. In fact, the petitioner's appeal was significantly late as his July 6, 2013 appeal was filed more than (1) one year after the 45 day appeal period. Accordingly, for the above reasons, I must conclude that because petitioner did not appeal the October 1, 2011 BC Core Plan discontinuance within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the October 1, 2011 BadgerCare discontinuance issue in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the October 1, 2011 discontinuance of petitioner's BadgerCare Core Plan benefits, as the appeal is untimely.

THEREFORE, it is

ORDERED

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 23rd day of September, 2013

\sGary M. Wolkstein
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 23, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability