



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/151184

PRELIMINARY RECITALS

Pursuant to a petition filed August 05, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on October 29, 2013, at Milwaukee, 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:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Pang Thao Xiong, Income Maintenance Specialist II
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner last made a premium payment in March 2013. (Testimony of Petitioner)
3. On May 17, 2013, the agency sent Petitioner a notice indicating that her BadgerCare+ benefits would be ending effective June 1, 2013, because she had not paid the required premium and that if she wanted to continue her benefits, she needed to make payment by the end of July 2013. The

notice further stated that if Petitioner wished to file an appeal, she needed to do so by July 17, 2013. (Exhibit 2, pgs. 5-8)

4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 5, 2013. (Exhibit 1)

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 BadgerCare+ benefits 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, the reduction of benefits or termination of an ongoing case. The petitioner's appeal was filed on August 5, 2013, 65 days after the June 1, 2013, date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Even if the merits of Petitioner's case could be examined, it is clear the agency acted correctly. Petitioner testified that she has not made any payments towards her BadgerCare+ premium since March 2013.

When a person fails to pay a premium, her BadgerCare+ case will close and she will not be allowed to re-enroll in BadgerCare+ for 12 months, unless the failure to pay was for good cause. Wis. Adm. Code § DHS 103.085(3)(b)1; *BEH* § 19.8.1

Good cause for not paying a premium includes the following:

1. Problems with the financial institution.
2. CARES problem.
3. Local agency problem.
4. Wage withholding problem.
5. Fair hearing decision.

BadgerCare Plus Eligibility Handbook, § 19.8.3

Petitioner provided two reasons for failing to pay the premium; in her testimony she claimed she was confused about her premium status; in her appeal letter she stated she just had problems paying. Neither constitutes good cause for failing to pay the premium under *BadgerCare Plus Eligibility Handbook, § 19.8.3* (I also note that Petitioner's claim that she was confused about her premiums to be somewhat dubious, given that she had previously made regular payments.) As such, the agency correctly terminated Petitioner's benefits and placed her in restrictive re-enrollment.

NOTE: A person may now apply for subsidized private health insurance, with coverage beginning effective January 1, 2014 (if you enroll by December 15, 2013). Late enrollments will be allowed until March 31, 2014, but will not be retroactive. Enrollment can be accomplished via the federal website, <https://www.healthcare.gov> or through the federal call center at 1-██████████.

Petitioner can select from various insurance plans that have differing premiums which are based upon a person's income and the amount of coverage sought. (The different plans are referred to as gold, silver and bronze).

The various plans may also have varying co-payments and deductibles. If a household's income is below 250% FPL (about \$59,000 for a family of four), there will also be a subsidy to help pay co-payments and deductibles.

There is also a listing of free and reduce cost clinics at <http://city.milwaukee.gov/medassist/Free-and-Lowcost-Clinics-in-Milwaukee> that Petitioner might find useful.

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 Milwaukee,
Wisconsin, this 31st day of October, 2013.

\sMayumi M. Ishii
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 October 31, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability