



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/151250

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services (MES) in regard to Medical Assistance, a telephonic hearing was continued on October 09, 2013, at Milwaukee, Wisconsin. At the request of petitioner, a hearing which was begun on September 4, 2013 was continued to October 9, 2013 so that the MES representative could mail all exhibits to petitioner to review prior to the continued hearing date. After the October 9, 2013 hearing, the record was held open for one week for petitioner to submit to the Division of Hearings and Appeals (DHA) (and to MES) the alleged August, 2013 notice which allegedly created a timely hearing right in this BC case. The petitioner failed to submit that notice by October 16, 2013 or even by the date of this decision.

The issue for determination is whether the petitioner's appeal of the April 1, 2013 discontinuance of her BadgerCare Plus benefits due to failure to pay her BC premiums is timely.

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, Room 651
Madison, Wisconsin 53703

By: Pang Thao-Xiong, income maintenance worker 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 resides with her minor son. The petitioner and her son received BadgerCare (BC) Plus benefits.
2. The Milwaukee Enrollment Services (MES) sent a February 7, 2013 notice to the petitioner at her correct address which stated that petitioner must pay a \$65 BC premium effective March 1, 2013. See Exhibit 3.
3. The Milwaukee Enrollment Services (MES) sent a March 19, 2013 Notice of Decision to the petitioner at her correct address stating that effective April 1, 2013 her BadgerCare (BC) Plus benefits would discontinue and she would be placed in restrictive re-enrollment, due to her failure to timely pay her BC premium. 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 (deadline of May 17, 2013). See Exhibit 2.
4. Petitioner admitted that she received the March 19, 2013 notice (Exhibit 2).
5. The petitioner mailed an appeal to the Division of Hearings and Appeals (DHA) which was postmarked on August 7, 2013, and received at DHA on August 12, 2013.
6. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the April 1, 2013 discontinuance prior to August 7, 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 April 1, 2013 discontinuance of petitioner's BadgerCare Plus benefits (and placement in restrictive re-enrollment), due to failure to timely pay her required BC premium.

During the September 4, 2013 and continued hearing on October 9, 2013, petitioner admitted that she received the March 19, 2013 notice which stated her BC Plus benefits would discontinue as of April 1, 2013 and that she would be placed in 12 months of BC restrictive re-enrollment. There was no evidence that anyone at the county agency attempted to prevent the petitioner from filing a timely appeal at DHA.

During the September 4, 2013 and October 9, 2013 hearings, petitioner was not able to establish any good cause for not filing an appeal with DHA during the 45 day period (until May 17, 2013) after receiving the March 19, 2013 notice discontinuing her BC benefits effective April 1, 2013. The petitioner alleged that she received an August, 2013 notice regarding her BC benefits as of April, 2013. However, while the record was held open, petitioner failed to submit any such notice to DHA. See above Preliminary Recitals. The petitioner did explain that she could not afford the \$65 BC premium during March, 2013, and thus did not timely pay that premium. Such explanation does not establish good cause for an untimely appeal. Accordingly, for the above reasons, I must conclude that because petitioner did not appeal the April 1, 2013 BC Plus discontinuance within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the April 1, 2013 BadgerCare discontinuance or restrictive re-enrollment issues in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the April 1, 2013 discontinuance or restrictive re-enrollment of petitioner's BadgerCare Plus 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, Room 651, 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 2nd day of December, 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 December 2, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability