



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/151252

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 12, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on September 10, 2013, at Sheboygan, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely and, if so, whether the agency properly terminated Petitioner’s BC+ benefits and placed her in restrictive re-enrollment for failure to pay the BC+ premium.

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: Kris Schmidt

Sheboygan County Department of Human Services  
3620 Wilgus Ave  
[Redacted] 53081

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [Redacted]) is a resident of Sheboygan County.
2. On March 5, 2013, the Petitioner submitted a Six Month Report Form (SMRF) to the agency. On March 21, 2013, the Petitioner had contact with the agency regarding the SMRF.

3. On March 28, 2013, the agency issued a Notice of Decision to the Petitioner at [REDACTED] 53081 informing her that she was eligible for BC+ benefits effective May 1, 2013 with a monthly premium of \$66.
4. On April 17, 2013, a premium coupon was mailed to the Petitioner.
5. On May 17, 2013, the agency issued a Notice of Decision to the Petitioner at [REDACTED] 53081 informing her that she was not enrolled in BC+ effective June 1, 2013 because her BC+ premium had not been paid. It further informed her that if her premium was not paid by the end of the next month, she would be placed in restrictive re-enrollment.
6. On July 23, 2013, the Petitioner contacted the agency about her BC+ benefits and was informed that her benefits had been discontinued due to non-payment of her premium.
7. On August 12, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

A hearing officer can only rule on the merits of cases 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 or BC+ must be filed within 45 days of the date of the action. Wis. Stats. § 49.45(5). 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 73 days after the date of the action.

The Petitioner testified at the hearing that she did not receive the notices or premium coupon mailed by the agency. She testified that she was having problems with receiving her mail between January, 2013 – June, 2013. She did not report the problems to the agency. She did present a letter from her landlord which stated that there were mail problems which she attributed to the Petitioner's neighbor's taking mail from the Petitioner.

The Petitioner's evidence is insufficient to demonstrate that her appeal was timely and that she did not receive the notices from the agency. Even after her contact with the agency on July 23, 2013 about the termination of her benefits, the Petitioner waited an additional three weeks to file an appeal. Further, the Petitioner's evidence is not sufficiently credible to establish that she did not receive the agency notices regarding her benefits and appeal rights. It is not credible that the Petitioner would submit a SMRF in March but not follow up with the agency until July to determine the status of her benefits. The Petitioner has been enrolled in the program for some time and had monthly premium payments as recently as October, 2012. Further, the SMRF concerned not only her BC+ benefits but also her FS benefits. It is not credible that she would not follow-up on the SMRF submitted in March until July.

Based on the evidence submitted, I conclude that the Petitioner's appeal was not timely.

### CONCLUSIONS OF LAW

The Petitioner's appeal was not timely.

**THEREFORE, it is ORDERED**

That the petition be, and hereby 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 11th day of November, 2013

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\sDebra Bursinger  
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 November 11, 2013.

Sheboygan County Department of Human Services  
Division of Health Care Access and Accountability