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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/151765

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 30, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on October 01, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly terminated Petitioner's Medicaid benefits.

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: Lashaun Johnson, Income Maintenance Worker 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. On or about September 10, 2012, Petitioner applied for Medicaid benefits under a presumptive disability. The agency ran Petitioner's case and confirmed her eligibility. (Exhibit 3, pg. 7)

3. On July 26, 2013, Petitioner completed an on-line renewal form for both healthcare and foodshare. (Exhibit 3, pgs. 13-23)
4. For reasons not made clear in the record, the agency sent Petitioner new applications for Medicaid and Medicaid Presumptive Disability benefits on July 29, 2013. (Id.)
5. On or about August 1, 2013, Petitioner's health care worker, Katie Larson submitted an ADDMD indicating that Petitioner did not have an urgent need for medical services, but that she was, "unable to work or return to normal functions for at least 12 months or has a condition that will result in death within the next 12 months." (Exhibit 3, pgs. 4-5)
6. On August 19, 2013, the agency sent Petitioner a notice indicating that effective September 1, 2013, her Medicaid benefits would be ending because her renewal was not completed. (Exhibit 3, pgs. 24-27)
7. On August 23, 2013, the Disability Determination Bureau (DDB) sent the agency a fax, stating that Petitioner's application for Medicaid Benefits under a Presumptive Disability cannot be approved because the evidence does not establish that the claim is a likely allowance. (Exhibit 3, pg. 3)
8. On August 30, 2013, the agency sent Petitioner a notice indicating that as of September 1, 2013, she would no longer be enrolled in Medicaid. (Exhibit 3, pgs. 28-31)
9. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 30, 2013. (Exhibit 1)

### **DISCUSSION**

Persons between 18 and 65 who are not pregnant and have no children under 19 living with them are generally ineligible for regular medical assistance benefits unless they are disabled. Wis. Stat. §§ 49.46(1) and 49.47(4). However, under state and federal regulations, an individual can qualify for Medicaid benefits under a presumptive disability. *Medicaid Eligibility Handbook (MEH) §5.9.1*; see also *Wis. Adm. Code § DHS 103.03(1)(e)*.

#### **5.9.1 Presumptive Disability Introduction**

Federal SSI law and regulations state that the SSI program can find an individual to be presumptively disabled and will be treated as a person with a disability until a final disability determination can be completed. To be treated as presumptively disabled by SSI means that the applicant's benefits can begin before SSA, or its contracted agency, has formally determined the individual to be disabled.

Wisconsin's Medicaid program also allows a determination of presumptive disability.

Presumptive Disability (PD) is a method for temporarily determining a disability for an individual while a formal disability determination is being done by DDB. Presumptive disability is determined either by the DDB, or in some circumstances, by the IM worker. The regular disability application process ([5.3 Disability Application Process](#)) must still be completed for persons with a presumptive disability. A presumptive disability decision stands until the DDB makes its final disability determination.

*MEH §5.9.1*

*Wis. Adm. Code § DHS 103.03(1)(e) Presumption of disability in an emergency:*

1. Under emergency circumstances, a person may be presumed disabled for purposes of demonstrating SSI-relatedness and be eligible for MA without the verification required under par. (d).
2. When an emergency need for MA exists, the department shall make a preliminary disability determination within 7 days of the date a completed disability determination form is received.
3. An emergency need for MA shall exist when the applicant is:
  - a. A patient in a hospital;
  - b. Seriously impaired and the attending physician states the applicant will be unable to work or return to normal functioning for at least 12 months;
  - c. In need of long-term care and the nursing home will not admit the applicant until MA benefits are in effect; or
  - d. Unable to return home from a nursing home unless in-home service or equipment is available and this cannot be obtained without MA benefits.

*Wis. Adm. Code § DHS 103.03(1)*

If an agency worker is making a presumptive disability determination a “medical professional” must attest in writing that the individual’s circumstances constitute an urgent need, as defined in MEH §5.9.2.1 and that the individual has a certain set of impairments, as defined in MEH §5.9.2.2. *See MEH §5.9.2*

It is undisputed that Petitioner was properly certified by the agency for Medicaid under a presumptive disability in September 2012. It is unclear why Petitioner was qualified for Medicaid benefits under a presumptive disability for as long as she was. However, on August 23, 2013, the DDB denied Petitioner’s application for Medicaid based upon a presumptive disability, because “the evidence does not establish that the claim is a likely allowance.” (Exhibit 3, pg. 3)

In cases where the DDB denies an application for Medicaid under a presumptive disability, the DDB is effectively reversing the agency worker’s determination and Medicaid benefits should be terminated following timely notice requirements. *MEH §5.9.6.3*

Consequently, the agency correctly terminated Petitioner’s Medicaid benefits, effective September 1, 2013.

#### *Other Information*

Wisconsin Medicaid law will change significantly, effective January 1, 2013. On that date, a person is eligible for Wisconsin Medicaid if his income is at or below 100% of the federal poverty level; it will no longer be necessary that a recipient be under 19, elderly, blind, disabled, or a caretaker relative. The January 2014 version of Medicaid may be applied for online from November 18, 2013 onward at Wisconsin’s website, <https://access.wisconsin.gov>.

A person may also 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-██████████

#### **CONCLUSIONS OF LAW**

The agency correctly terminated Petitioner’s Medicaid benefits, effective September 1, 2013.

**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 25th day of October, 2013

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\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 25, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability