



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██
██

DECISION

FCP/151917

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on October 09, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether this appeal 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: Chris Sobczak

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On June 24, 2013 the Department sent notice to petitioner informing him that he was liable for a cost share for family care program in the amount of \$235.99. The notice provided appeal rights and a deadline for requesting a hearing of August 16, 2013.
3. Petitioner filed a request for hearing on September 10, 2013.

DISCUSSION

An administrative law judge (ALJ) or 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 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. 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 19, 2012 notice that indicated the 11/1/12 termination of SLMB due to failure to complete the renewal. See Exhibit 1.

The Deadline for filing an appeal was August 16, 2013. Petitioner's request for hearing was not filed before the 45-day deadline. At the hearing, petitioner's stepson claimed that petitioner did not receive the notice, and that the notice was ultimately obtained when his mother contacted the agency to request a new copy. But, the notice was sent to the accurate address and the record does not reflect that it was returned as undelivered. Where the evidence presented demonstrates that a notice was correctly mailed, this fact creates a rebuttable presumption of delivery that a petitioner must overcome with evidence demonstrating that the notice was not actually received.

This interpretation is confirmed by Wisconsin case law:

It is well established that the mailing of a letter creates a presumption that the letter was delivered and received. See, Nack v. State, 189 Wis. 633, 636, 208 N.W. 487(1926), (citing Wigmore, Evidence2d. ed.) § 2153; 1 Wigmore, Evidence (2nd ed.) § 95) Mullen v. Braatz, 179 Wis. 2d 749, 753, 508 N.W.2d 446(Ct.App.1993); Solberg v. Sec. Of Dept of Health & Human Services, 583 F.Supp. 1095, 1097 (E.D.Wis.1984); Hagner v. United States, 285 U.S. 427, 430, 52. S.Ct. 417, 418(1932).

***(Portions of discussion not relevant here omitted).

This evidence raises a rebuttable presumption which merely shifts to the challenging party the burden of presenting credible evidence of non-receipt. United States v. Freeman, 402 F.Supp. 1080, 1082(E.D.Wis.1975). Such a presumption may not, however, be given conclusive effect without violating the due process clause. United States v. Bowen, 414 F.2nd 1268, 1273(3d.Cir.1969); Mullen v. Braatz, 179 Wis. 2d at 453. If the defendant denies receipt of the mailing, the presumption is spent and a question of fact is raised. (Examiner note: Citations omitted here.) The issue is then one of credibility for the factfinder. The factfinder may believe the denial of receipt, or the factfinder may disbelieve the denial of receipt.

See State ex. Rel. Flores v. State, 183 Wis.2d 587, at 612-3 ((1994).

Petitioner offered notion to rebut this presumption other than to state that it was not received. That is insufficient. The appeal was untimely.

CONCLUSIONS OF LAW

The appeal is untimely.

THEREFORE, it is

ORDERED

That this appeal 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 Madison,
Wisconsin, this 22nd day of November, 2013

\sJohn P. Tedesco
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 22, 2013.

Milwaukee Enrollment Services
Office of Family Care Expansion