



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MQB/152070

PRELIMINARY RECITALS

Pursuant to a petition filed September 13, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medicare Premium Assistance/QMB, a hearing was held on October 17, 2013, at Madison, Wisconsin.

The issues for determination are (1) whether petitioner's appeal was timely filed, and (2) whether the agency correctly declined to backdate the petitioner's QMB from her September 2013 application.

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: Joanne Jaehnke, ES Supr.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. The petitioner was a QMB recipient from March 1, 2013 to February 28, 2013. *See* Exhibit 6, Eligibility History. The county agency began reviewing the petitioner's case in January, and issued a written verification request on January 15, 2013.
3. On February 1, 2013, the county agency sent a written notice to the petitioner at her correct address. The notice advised that the petitioner's Medicare Premium Assistance would end effective March 1, 2013, due to her failure to supply the requested verification. The notice also advised that the petitioner's deadline for appealing this discontinuance was **April 16, 2013** (45 days). *See*, Exhibit 3.
4. The petitioner received the February 1, 2013 notice.
5. The petitioner filed a new application for Medicare Premium Assistance at the agency on September 12, 2013. On September 13, 2013, the Department issued written notice to the petitioner advising that she had been found eligible for Medicare Premium Assistance, effective October 1, 2013.
6. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on September 13, 2013.

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 Medicaid-related programs (of which this is one) 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 or the reduction or termination of an ongoing case. The petitioner's appeal was filed **196** days after the date of the March 1 discontinuance action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The petitioner explained that she had surgery on February 26. However, this would not have prevented her from receiving the discontinuance notice on February 1 and filing a hearing request before her surgery. The petitioner also complained that she has had difficulty in receiving some forms in the mail. The Administrative Law Judge offered to hold the hearing record open for the petitioner to submit verification of her mail receipt problems, but the petitioner decided not to attempt to obtain such verification.

Finally, the petitioner expressed a desire to have her Medicare Premium Assistance (a/k/a Qualified Medicare Beneficiary benefit), applied for in September 2013, backdated to whatever degree possible. However, retroactive certification is not possible for the Qualified Medicare Beneficiary benefit:

...in the case of medicare cost-sharing with respect to a qualified medicare beneficiary defined in subsection (p)(1)..., benefits are not retroactive.

42 U.S.C. 1396d(a). *See in accord, Medicaid Eligibility Handbook*, § 32.7.1.1 (there is no corresponding state administrative code provision). Thus, the Department's decision to certify the petitioner for QMB effective October 1, 2013, was correct.

CONCLUSIONS OF LAW

1. There is no jurisdiction to review the discontinuance of the petitioner's Medicare Premium Assistance on March 1, 2013, as the appeal is untimely.

2. The agency correctly began the petitioner's QMB effective October 1, 2013, based on a September 12, 2013 application date.

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 Madison,
Wisconsin, this 18th day of October, 2013

\sNancy J. Gagnon
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 18, 2013.

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