



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/154876

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 19, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of the discontinuance of her BadgerCare benefits 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: Yia Xiong

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received BadgerCare (BC) Plus benefits with a required monthly premium.
2. The petitioner failed to pay her monthly BC premium to Milwaukee Enrollment Services.

3. The respondent sent a September 18, 2013, Notice to the petitioner's correct address indicating that effective October 1, 2013, her BadgerCare (BC) Plus Plan benefits would discontinue and that she would be placed in a twelve month restrictive reenrollment status, due to failure to pay her BadgerCare premiums to the county agency. See, Exhibit 7. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) no later than November 18, 2013. *Id.*
4. The September 18, 2013, Notice was not returned to the respondent as undeliverable.
5. The petitioner's appeal was postmarked to the Division of Hearings and Appeals (DHA) on January 16, 2014. Exhibit 1.
6. There is no evidence in the hearing record that petitioner requested a DHA appeal prior to January 16, 2014.

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.** 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 October 1, 2013 discontinuance of petitioner's BadgerCare and placement of the petitioner in a twelve month restrictive reenrollment status. See Exhibit 7.

During the February 19, 2014, hearing, petitioner contested that that she had ever received any notice of the premium due. Notably, petitioner did, in fact, contact the respondent by telephone regarding her premium in September of 2013, and at that time was informed that she needed to pay \$160.00, or two premiums, in order to retain her BC coverage. Petitioner testified that she was unable to afford that amount.

The respondent established a *prima facie* case that petitioner's appeal was not filed timely; petitioner was not able to provide any valid reason or good cause for not filing an appeal with DHA during the 45 day period after receiving the September 18, 2013, Notice discontinuing her BC benefits effective October 1, 2013. Accordingly, for the above reasons, I conclude that because petitioner did not appeal the September 18, 2013, BC discontinuance within the 45-day time limit, and therefore the Division of Hearings and Appeals has no subject matter jurisdiction to address the October 1, 2013 BadgerCare discontinuance issue in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the October 1, 2013 discontinuance 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

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 8th day of April, 2014

\sPeter McCombs
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 April 8, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability