



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/154973

PRELIMINARY RECITALS

Pursuant to a petition filed January 23, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regards to the discontinuance of BadgerCare Plus, a telephone hearing was held on February 26, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely as a matter of law.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. She was receiving BadgerCare Plus as the casehead of a three person household, i.e., herself and two minor children, in at least August, 2013, with no premium obligation.
2. On or about August 13, 2013, the petitioner verified with the agency that she was employed 40 hours per week; the agency verified income and expenses thereafter.
3. Based upon this August, 2013, reported income, the agency issued a Notice on September 18, 2013, to the petitioner informing her that as of November 1, 2013, she must individually pay a

premium of \$67 per month to retain eligibility for BC+, and that her children did not have to pay a premium. The Notice told her a BC+ premium payment notice will come each month. In addition, the petitioner contacted the agency on September 18, 2013, and provided verification of a loan on the car. This event did not cause any change to her case.

4. On October 18, 2013, a premium payment notice was issued by the Department from a centralized office in Madison, Wisconsin.
5. On October 29, 2013, the petitioner called the agency to report a change in her shift, but the hours were the same total. No other information was reported, and there was no query about where to pay a BadgerCare Plus premium even though she received the Notice of September 18, 2013, telling her a premium would be due for November.
6. On November 18, 2013, the agency issued a Notice to the petitioner informing her that she had not paid her November premium and would be discontinued, individually, from BadgerCare Plus, effective December 1, 2013; and restricted from re-enrolling for 12 months.
7. The petitioner denied receiving the November 18, 2013, Notice, but it did not return in the mail to the county agency. The Notice was addressed to the petitioner's then current residence address.
8. The petitioner did not make contact with the income maintenance agency between October 29, 2013, and January 23, 2014.
9. On January 23, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the discontinuance of her BC+ individual eligibility, effective December 1, 2013, and the imposition of a 12 months restrictive re-enrollment period.

DISCUSSION

An appeal contesting negative actions taken against a recipient's Medical Assistance (MA) case, including the imposition of a premium, reduction or cessation of benefits, or denial of benefits, must be filed within 45 days of the effective date of the negative action. See, Wis. Stat. §49.45(5). This applies to BadgerCare Plus as a sub-class of MA. The instant appeal was filed 54 days after the effective date.

The Division of Hearings & Appeals has a longstanding policy that the time limit for filing an appeal may be tolled, i.e., extended, when it is shown that the recipient did not actually receive the notice of the negative action being appealed.

Here, the petitioner admits receipt of the Notice telling her a premium would be due for November, and a premium payment notice would be issued to her. This Notice gave her full information on her appeal rights as well. She then denies receipt of a premium payment notice. To this, the agency produces rebuttal evidence, i.e., a CARES database screen reflecting that the premium payment notice was mailed by the Department on October 29, 2013. Such a mailing, would not in the normal course of business, return to the county as the State agency issued it. The petitioner then asserted she did not get the November 18, 2013, Notice of the discontinuance and restrictive enrollment period either. This Notice would in the normal course of business return to the agency if not delivered. Xiong testified that he checked for its return or a notation of the return, and there was none in the agency records. This Notice was also correctly addressed. The petitioner then testified that she made efforts in late November, 2013, and again in December, 2013, to find out where the premium was supposed to go, but no one at the agency could help her. She then waited until January 23, 2014, when she came to the agency for a full explanation of why her BC+ ended and how she could pay the premium and get it back. She added that she had problems with mail delivery in the past, i.e., her mail at [REDACTED] was sometimes delivered to [REDACTED], and vice versa. She had no proof of this, no other documents, nor any witness from the other home she described.

On this jurisdictional question of the timeliness of the appeal, this is a very close case. But the petitioner's testimony is highly convenient, evasive, totally self-serving, uncorroborated by Case Comments that should reflect any client contact at the agency (there are none between October 29, 2013 – January 23, 2014), contradicted by the CARES screen showing the premium payment notice was sent on October 18, 2013, and contradicted by the fact that the Notice of November 18, 2013, was properly addressed, would normally return to the income maintenance agency if undelivered, and that it did not. I find her testimony not credible. I conclude that the inverse is in fact the case. That she did receive the Notice of November 18, 2013, and she took no direct action to resolve the matter until January 23, 2014, for whatever reasons she may have had. I am particularly mindful of the fact that she alleged two contacts with the agency asking for an address to send the premium to. It is not credible to this fact finder that any income maintenance worker at MiLES would be unable to locate that address in very short order. I am also mindful of the fact that she received the September 18, 2013, notice telling her she must pay the \$67 effective November, 2013, and yet neither the September 18, 2013, or October 29, 2013, contacts recorded in the agency Case Comments reflect any discussion of this premium, or where to mail it. In short, she *knew* that she was supposed to pay a premium and yet took no meaningful action to get that premium paid until over 4 months later. There is no evidence the agency did anything incorrectly here. Rather, the petitioner failed to act. She compounded her inability to act in timely matter by waiting too long to inquire and appeal. She sat on her rights for too long, and has consequently lost them.

This appeal is untimely and must be dismissed.

CONCLUSIONS OF LAW

That the petition for review of January 23, 2014, is untimely as a matter of fact and law.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same 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, Room 651, 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 28th day of February, 2014

\sKenneth D. Duren, Assistant Administrator
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 February 28, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability