



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/155946

PRELIMINARY RECITALS

Pursuant to a petition filed March 05, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Brown County Human Services in regard to Medical Assistance, a hearing was held on April 22, 2014, at Green Bay, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction in this matter.

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: Theresa Sommerfield
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner applied for express enrollment in July, 2013, as a pregnant woman. Verification requests were sent to petitioner, but nothing was received by the August 21, 2013, deadline.

3. Petitioner received a notice dated August 22, 2013, entitled *About Your Benefits*; the notice informed her that her enrollment in BadgerCare Plus and Family Planning Services was denied as of July 1, 2013, due to failure to provide required verification. The notice also informed petitioner of her appeal rights and of the process for requesting a hearing, including the October 7, 2013, deadline for requesting a Hearing. Exhibit 4.
4. Petitioner's deadline to provide required proof was extended by the respondent to September 16, 2013. Nothing was received, and therefore petitioner's case remained closed.
3. Petitioner did not file a request for hearing until March 5, 2014.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning MA is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d); Wis. Stat. § 49.45(5); Wis. Admin. Code § DHS 104.01(5)(a)3; Wis. Admin. Code § HA 3.05(3); *BadgerCare Plus Eligibility Handbook* 29.2. A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

In this case, the action being appealed is the August 22, 2013, denial of petitioner's July, 2013, request for enrollment in MA. Petitioner appeals because she believes her MA enrollment should have been effective to cover medical care that she received in September, 2013. Petitioner's request for a Hearing was not filed until March 5, 2013. See, Wis. Admin. Code §§ HA 3.05(2)(a) & 3.05(3)(c). This is well outside of the allowable 45 days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner testified that she did not request a hearing sooner because she had only recently been made aware that her medical bills had not been covered. She had reapplied for MA in January, 2014, and was approved, but the respondent was unable to backdate her coverage to September, 2013. The circumstances testified to by petitioner are unfortunate, but they do not create jurisdiction where none otherwise exists. The appeal of the denial is untimely, and I have no equitable powers that would allow me to consider the fairness of the situation; I must apply the law as it is written

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this matter.

NOW, THEREFORE, it is ORDERED

That 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 23rd day of May, 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 May 23, 2014.

Brown County Human Services
Division of Health Care Access and Accountability