



FH  
[REDACTED]

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

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCC/156412

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 26, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Iowa County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on May 15, 2014.

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

There appeared at that time via telephone 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: Teresa Bahr, ESS

Iowa County Department of Social Services  
303 W Chapel Street, Ste 2300  
Dodgeville, WI 53533

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Iowa County, Wisconsin.

2. The primary person on petitioner's case (petitioner's wife) received a notice dated October 18, 2013 and entitled *About Your Benefits*; that notice informed petitioner that his MA BadgerCare Plus Core Plan ["MA Core"] would end effective November 1, 2013; the notice also informed petitioner of his appeal rights and of the process for requesting a Hearing, including the time limit for requesting a Hearing.
3. Petitioner did not request a Hearing concerning the November 1, 2013 termination of his MA Core until March 26, 2014; his request for a Hearing was made by way of a *Request For Fair Hearing* form dated March 25, 2014 and received by DHA on March 28, 2014 via U.S. Mail postmarked March 26, 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 Core 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) (2012); Wis. Stat. § 49.45(5)(a) (2011-12); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (February 2013). 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) (February 2013).

In this case, the action being appealed is the November 1, 2013 discontinuance of petitioner's MA Core. Petitioner's request for a Hearing was not filed until March 26, 2014. 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 he did not request a Hearing sooner because the October 18, 2013 *About Your Benefits* notice was addressed using his wife's name, not his, and his wife failed to tell him about it. He testified that his wife has "significant mental glitches." This is unfortunate, but does not create jurisdiction where none otherwise exists. Petitioner's wife is the primary person on the case (she is listed as the primary person on the original application). This is why notices are addressed using the name of petitioner's wife.

### **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 21st day of May, 2014

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\sSean P. Maloney  
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 21, 2014.

Iowa County Department of Social Services  
Division of Health Care Access and Accountability