



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

BCS/157068

PRELIMINARY RECITALS

Pursuant to a petition filed April 21, 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 May 13, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency's April 1, 2014, discontinuance of petitioner's BadgerCare benefits was proper.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. The petitioner received BadgerCare benefits until April 1, 2014.

3. The county agency sent a March 17, 2014, Notice of Decision to the petitioner stating that her BadgerCare benefits would discontinue effective April 1, 2014, due to income in excess of program limits. See Exhibit 1.

DISCUSSION

Petitioner is disputing her lack of notice of the termination of her MA benefits. She concedes that the income attributed to her is accurate. She indicated that it was not until she called to set up a medical appointment that she learned that she was not covered.

Before discontinuing a person's ongoing MA or BadgerCare benefits, the Department must issue timely advance, adequate written notice of the discontinuance. 42 C.F.R. 435.919(a) and 42 C.F.R. 431.210; Goldberg v. Kelly, 397 U.S. 254 (1970). In general, before a negative action is taken by a county agency, the agency must mail an adequate notice of the action at least ten days before the effective date of the action. 42 C.F.R. § 431.211; Income Maintenance Manual, II-G-2.2.0. It is the responsibility of the county agency to provide a copy of this notice to demonstrate that such notice was, in fact, issued by the agency within the requisite timeframe.

The respondent testified that notices were originally sent to the last known address; when the notice was returned, the respondent re-sent notices to the new address on April 17, 2014. Strangely, the respondent further testified that petitioner's mailing address had been previously updated on March 26, 2014; the respondent was unable to explain the approximately 3 week delay in re-sending the notice. As such, I find that the notice was neither timely, nor adequate, since the notice re-sent on April 17, 2014, presumably referenced the then-expired April 1, 2014 termination date.

CONCLUSIONS OF LAW

The county agency improperly and incorrectly discontinued petitioner's BadgerCare benefits effective April 1, 2014, due to the lack of adequate, accurate, and timely notice of the negative action pursuant to 42 C.F.R. 435.919(a), 42 C.F.R. § 431.211, and the Income Maintenance Manual, II-G-2.2.0.

NOW, THEREFORE, it is

ORDERED

That matter is remanded to the county agency with instructions to certify the petitioner as BadgerCare eligible retroactive to April 1, 2014, within 10 days of the date of this Decision. The respondent may issue an adequate and timely eligibility notice at any time following issuance of this Decision.

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 1st day of July, 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 July 1, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability