



FH  
[REDACTED]

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

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/157352

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 01, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Brown County Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on June 12, 2014.

The issue for determination is whether petitioner is eligible for MA for April 2014.

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

**OTHER PERSON PRESENT:**

Diane Woodhead, Insurance Agent, Woodhead Insurance

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 49 years old) is a resident of Brown County, Wisconsin.
2. Petitioner's MA ended effective April 1, 2014 because her income was over the MA program limit.
3. Petitioner received a letter notice dated February 26, 2014 and entitled *About Your Benefits*; that notice notified petitioner that her MA would end effective April 1, 2014 because her income was over the MA program limit.
4. Petitioner received another letter notice, this one was dated April 3, 2014 and was also entitled *About Your Benefits*; that notice stated that petitioner's MA would end effective May 1, 2014 because her income was over the MA program limit; that notice also notified petitioner that her daughter's MA would end effective May 1, 2014 because her daughter was no longer under the age of 19 years.
5. Petitioner obtained medical insurance coverage through the federal online marketplace; she believed her MA ended May 1, 2014 so she had the federal online marketplace coverage begin May 1, 2014.

### DISCUSSION

Petitioner has a gap in medical insurance coverage for the month of April 2014. She testified that she incurred medical bills in April 2014 that are creating a financial hardship for her. She does not deny that for April 2014 she was not eligible for MA because her income was over the MA program limit. However, she argues that she should nevertheless have MA coverage for April 2014 because the April 3, 2014 *About Your Benefits* was confusing and she relied on it when getting coverage starting May 1, 2014 (instead of April 1, 2014) on the federal online marketplace.

Petitioner may be correct when she argues that the April 3, 2014 *About Your Benefits* is confusing. These circumstances are unfortunate for petitioner, but cannot make her eligible for MA when her income is over the MA program limit. As an Administrative Law Judge ["ALJ"] I must follow the strict legal requirements of the law. I cannot make an exception based on equitable considerations. In order to do so I would have to exercise equitable powers. ALJ do not possess any equitable powers and must apply the law as it is written.<sup>1</sup>

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<sup>1</sup> Final Decision Case No. A-40/44630 [Department of Health and Social Services (DHSS) December 30, 1987] adopting Proposed Decision Case No. A-40/44630 [Office of Administrative Hearings (OAH) October 19, 1987]; "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); See also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985). "As a general matter, an administrative agency has only those powers as are expressly conferred or necessarily implied from the statutory provisions under which it operates [citation omitted]". *Brown County v. DHSS Department*, 103 Wis.2d 37, 43, 307 N.W.2d 247 (1981). "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978).

**CONCLUSIONS OF LAW**

For the reason discussed above, petitioner is not eligible for MA for April 2014.

**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 25th day of June, 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 June 25, 2014.

Brown County Human Services  
Division of Health Care Access and Accountability