



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MQB/157376

PRELIMINARY RECITALS

Pursuant to a petition filed May 05, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance (MA), a telephone hearing was held on June 03, 2014.

The issue for determination is whether jurisdiction is present to review the petitioner's appeal due to the application of the doctrine of claim preclusion.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name and address]

Petitioner's Representative:

[Redacted representative name and address]

Respondent:

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

By: Pamela Kolb

Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Waupaca County.
2. An application for Institutional/Long-Term Care MA and Medicare Premium Assistance was filed on the petitioner's behalf on September 16, 2013. Backdated eligibility for Institutional MA

was sought retroactive to July 1, 2013. The application was signed by [REDACTED], and was accompanied by a cover letter from him on his law office letterhead.

3. On October 17, 2013, the agency issued written notice to the petitioner advising that his application had been denied due to failure to supply requested verification.
4. Petitioner appealed the denial, and a hearing was held on January 23, 2014. A Decision was issued on February 27, 2014, which concluded that denial of the petitioner's request for Medicare Premium Assistance was correct, due to excess income.
5. A simultaneous appeal of the respondent's denial of petitioner's concurrent application for Institutional/Long-Term Care MA on the basis of petitioner's failure to supply requested verifications was remanded to the respondent for further action.
6. Following remand of the Institutional/Long-Term Care MA matter, the respondent issued a March 21, 2014, notice which affirmed its denial of both the petitioner's application for Institutional/Long-Term Care MA, and the application for Medicare Premium Assistance.

DISCUSSION

Claim preclusion (formerly known as "res judicata") requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as "collateral estoppel") requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

The petitioner has had his "day in court" on the merits of his appeal regarding denial of his application for Medicare Premium Assistance. The instant appeal claim is precluded by that result, under both the doctrines of claim preclusion and issue preclusion. This matter has been decided in a final decision, and that result is binding as a matter of fact and law.

CONCLUSIONS OF LAW

That the instant appeal in DHA Case No. MQB/157376 is precluded by the doctrines of claim preclusion and issue preclusion as the claim and issue in the instant appeal was decided in a final decision in DHA Case No. MQB/153651, i.e., the Decision of ALJ Nancy Gagnon dated February 27, 2014; jurisdiction is not present to review the merits of the Medicare Premium Assistance denial again.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby is, 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 22nd day of July, 2014

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 22, 2014.

Waupaca County Department of Social Services
Division of Health Care Access and Accountability
Attorney [REDACTED] [REDACTED]