



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/159492

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a telephonic hearing was held on August 27, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of the April 1, 2014 discontinuance of his household's BadgerCare (BC) Plus benefits is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jose Silvestre, IM advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County who resides with his wife, [redacted], and their three minor children. The petitioner and his family received BadgerCare (BC) Plus benefits.
2. Milwaukee Enrollment Services (MES) sent a February 17, 2014 Notice of Decision to the petitioner at his correct address stating that effective April 1, 2014 his BadgerCare Plus benefits

would discontinue due to household income above the BC income eligibility limits. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) within 45 days of the notice's effective date (deadline of May 19, 2014). See Exhibit 2.

3. Petitioner admitted that he received the February 17, 2014 notice (Exhibit 2).
4. Milwaukee Enrollment Services (MES) sent a May 1, 2014 Notice of Decision to the petitioner at his correct address stating that his April 18, 2014 BC application solely for his daughter (IG) was denied due to failure to timely provide required verification. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) within 45 days of the notice's effective date (deadline of June 16, 2014). See Exhibit 5. That notice was not returned to MES as undeliverable.
5. The petitioner mailed an appeal to the Division of Hearings and Appeals (DHA) which was postmarked on July 29, 2014, and received at DHA on August 1, 2014. See Exhibits 3 and 1.
6. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the April 1, 2014 discontinuance or the May 1, 2014 denial prior to July 29, 2014.

DISCUSSION

An Administrative Law Judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. **An appeal of a negative action by a county agency concerning Medical Assistance (MA) must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0.** An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the April 1, 2014 discontinuance of petitioner's BadgerCare Plus benefits, due to household income above the BC income eligibility limits.

During the August 27, 2014 hearing, petitioner admitted that he received the February 17, 2014 notice which stated his BC Plus benefits would discontinue as of April 1, 2014, due to household income above the BC income eligibility limits. The petitioner did not admit receiving the May 1, 2014 denial notice (Exhibit 5), but that notice was also sent to the same correct address of record and was not returned to MES as undeliverable. The petitioner did not establish any problems with his mail delivery at the time of the issuance of the May 1, 2014 notice. There was no evidence that anyone at the county agency attempted to prevent the petitioner from filing a timely appeal at DHA.

During the August 27, 2014 hearing, petitioner was not able to provide any valid reason or good cause for not filing an appeal with DHA during the 45 day period (until May 19, 2014) after receiving the February 17, 2014 notice discontinuing his BC benefits effective April 1, 2014. In fact, the petitioner did not dispute that his appeal was untimely, but explained that he had made some phone calls to the county agency and talked with MES personnel about his BC case. He also explained that he was waiting to determine if his household income would decrease to make his household BC income eligible. Such phone calls to the county agency (or waiting for possible reduction in household income) do not establish good cause for a late appeal. Moreover, as an insurance agent, he was aware that filing deadlines needed to be met for a timely DHA appeal. Accordingly, for the above reasons, I must conclude that because petitioner did not appeal the April 1, 2014 BC Plus discontinuance within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the April 1, 2014 BadgerCare discontinuance

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the April 1, 2014 discontinuance of petitioner's BadgerCare (BC) Plus benefits (or the May 1, 2014 BC application denial), as the appeal is untimely.

THEREFORE, it is

ORDERED

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 17th day of October, 2014

\sGary M. Wolkstein
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 October 17, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability