



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MQB/159657

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), 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 her Qualified Medicare Beneficiary (QMB) benefits is timely.

There appeared at that time and place 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: Jose Silvestre, Jr., 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 received QMB benefits.
2. Milwaukee Enrollment Services (MES) sent a February 10, 2014 notice to the petitioner at her correct address stating that she must complete her QMB renewal application by March 31, 2014 or her QMB would end. See Exhibit 3.

3. Milwaukee Enrollment Services (MES) sent March 19, 2014 and March 24, 2014 Notices of Decision to the petitioner at her correct address stating that effective April 1, 2014 her QMB benefits would discontinue due to failure to timely complete her QMB review. See Exhibits 4.
4. The petitioner did not timely complete her QMB review by March 31, 2014.
5. The petitioner was unable to establish with any reliable evidence that she had problems with her mail delivery.
6. The petitioner faxed an August 7, 2014 appeal to the Division of Hearings and Appeals (DHA) regarding the April 1, 2014 QMB discontinuance which was received at DHA on August 7, 2014.
7. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the April 1, 2014 QMB discontinuance prior to August 7, 2014.
8. The petitioner re-applied for QMB during July, 2014, and was approved as of August, 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) or QMB 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 QMB benefits due to failure to timely complete her review. See Exhibit 1.

During the August 27, 2014 hearing, petitioner contested that she received the February 10, 2014 or March, 2014 notices which stated her QMB would discontinue as of April 1, 2014, if her renewal application was not completed by March 31, 2014. However, petitioner admitted that she takes some medication which can affect her memory. Furthermore, the Milwaukee Enrollment Services (MES) representative, Jose Silvestre, indicated that the relevant notices were not returned as undeliverable to MES. Furthermore, petitioner was unable to establish with any reliable testimony or evidence that she had problems with her mail delivery. There was also no evidence that anyone at MES 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 March 19, 2014 and March 24, 2014 notices discontinuing her QMB benefits effective April 1, 2014. Accordingly, for the above reasons, I conclude that because petitioner did not appeal the April 1, 2014 QMB discontinuance within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the April 1, 2014 QMB discontinuance issue in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the April 1, 2014 discontinuance of petitioner's QMB benefits, 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 3rd day of November, 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 November 3, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability