



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
Redact
[REDACTED]

DECISION

CTS/161076

PRELIMINARY RECITALS

Pursuant to a petition filed October 2, 2014, under Wis. Stat. § 49.45(5) and Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services agency in regards to the discontinuance of Medical Assistance – Caretaker Supplement benefits (“CTS”), a telephone hearing was held on November 19, 2014, at Milwaukee, Wisconsin. A hearing set for October 30, 2014, was rescheduled at the petitioner’s request.

The issue for determination is whether petitioner's appeal concerning the termination of CTS benefits was timely filed under law.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
Redact
[REDACTED]

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She was receiving Caretaker Supplement benefits for the needs of a minor in at least March, 2014.
2. On March 5, 2014, the county agency mailed a written notice to the petitioner at her then current and still current residence address, informing her that she must file a new application for

Caretaker Supplement benefits by March 14, 2014, or her Caretaker Supplement benefits would be denied, decreased or would end.

3. On April 18, 2014, the county agency sent a second written notice of negative action to the petitioner informing her formally that her Caretaker Supplement benefits would be discontinued, effective May 1, 2014, because she had not submitted a new signed application by March 14, 2014. This notice fully informed the petitioner how and where to appeal if she disagreed, and stated that the deadline to appeal was June 16, 2014.
4. On May 8, 2014, the petitioner contacted the county agency to inquire about why she had not received her May, 2014, Caretaker Supplement benefits. She was verbally informed at that time that she needed to actually sign a renewal application for Caretaker Supplement benefits, and a second summary page for her signature was re-mailed to her along with a verification request letter dated May 9, 2014, stating the signature and page must be returned by May 19, 2014, or her case would not be changed. The negative action was “pending” by the agency to allow for her to timely verify and in the event she did, benefits would be uninterrupted.
5. By May 22, 2014, the agency workers noted that the signature page had not been returned to the agency, and on May 23, 2014, a third notice of decision letter was mailed to the petitioner again informing her that her CTS benefits were denied, effective May, 2014.
6. The May 23, 2014, letter again informed the petitioner how and where to appeal if she disagreed with the discontinuance of her Caretaker Supplement benefits, and specifically told her that she had until July 8, 2015, i.e., 45 days after May 23, 2014, to file a timely appeal with the Division of Hearings & Appeals.
7. On August 12, 2014, the petitioner filed the completed signature page of the Caretaker Supplement application with the county agency; the agency thereafter processed it and restored her eligibility under a new application, effective August 1, 2014, and thereafter, by a notice of decision dated August 15, 2014.
8. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on October 2, 2014.
9. The negative action in this case was the discontinuance of Caretaker Supplement benefits, effective May 1, 2014, as effective on May 23, 2014, by the third notice of decision about the CTS discontinuance.

DISCUSSION

An administrative law judge 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 the Department of Health Services, or its agents, concerning an Medical Assistance-related program like the Caretaker Supplement benefit, (CTS) must be filed within 45 days of the effective date of the negative action. Wis. Stat. § 49.45(5); and see, Wis. Admin. Code §§HA 3.03(4); 3.05(3), and 3.02(15). A negative action can be the denial of an application, reduction of benefits, or the termination of an ongoing case, as here.

Here, that May 1, 2014, discontinuance was ultimately effective on May 23, 2014, when the agency informed the petitioner in writing that the signed application page had not been received by the verification deadline under the pending extension the agency had been given her to do so. She needed to appeal within 45 days of the date of that letter to contest the agency action.

Therefore, the petitioner's appeal was filed 132 days after the effective date of the discontinuance action taken on May 23, 2014. Thus, it was untimely, and no jurisdiction exists for considering the underlying factual merits of the case.

The petitioner's subsequent re-application for CTS benefits in August, 2014, resulted in the new provision of Caretaker Supplements prospectively forward, effective August 1, 2014, but that determination of the beginning date of benefits under a new application and action does not generate a new opportunity for the applicant to "bootstrap" an appeal about a past discontinuance action in May, 2014, to that action to somehow make her appeal now timely. Rather, she was notified of the discontinuance of Caretaker Supplements effective May 1, 2014, in the requisite written manner on three occasions and in advance, and she tried to resolve it with the agency rather than appeal. Despite the remedy being the simplest of actions, she failed to resolve it; and failed to appeal at any time prior to October 2, 2014. By then, she had lost the right to appeal the discontinuance action of May 1, 2014, and her case remained closed through June & July, 2014, as a direct result. Her August reapplication resulted in new benefits thereafter. She is not entitled to a review of the merits of the discontinuance action of May 1, 2014. She sat on her appeal rights for too long and consequently lost those rights. The instant appeal about Caretaker Supplement benefits discontinued for May – July, 2014, is dismissed for lack of jurisdiction, as untimely filed.

When the Department requests a recipient take a simple action to review an entitlement to public assistance, and to do so by a given deadline, the recipient would be well-advised to meet that deadline. Here, the petitioner also failed to meet deadlines for appealing the discontinuance action, and lost that right under law.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition 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 18th day of December, 2014

\sKenneth D. Duren, Assistant Administrator
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 December 18, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability