



FH
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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/161791

PRELIMINARY RECITALS

Pursuant to a petition filed November 7, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the La Crosse County Department of Human Services in regard to Family Care (FC) eligibility, a hearing was held on February 17, 2015, by telephone. Hearings set for December 10, 2014, and January 21, 2015, were rescheduled at the petitioner's request.

The issue for determination is whether petitioner's appeal was timely filed. whether the Department correctly determined that the petitioner was not financially eligible for FC.

There appeared at that time 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: Bob Uebele, ES Spec.

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES [REDACTED]), [REDACTED], is a resident of [REDACTED].

2. The petitioner applied for any relevant form of Medicaid plus Family Care on July 30, 2014. She was found to be financially ineligible for any form of Wisconsin Medicaid or Family Care. A notice was mailed to her from the Department on August 27, 2014, advising of this denial. The notice advised to file a hearing request within 45 days. *See*, Exhibit 8.
3. The petitioner also received a letter from the Aging and Disability Resource Center (ADRC) of Buffalo/Clark/Pepin Counties on September 4, 2014. It advised that, although the petitioner was “functionally eligible” for Family Care (*i.e.*, sufficiently disabled), she could not enroll in Family Care because she was not eligible for Medicaid. An appeal deadline was not identified in the letter. *See*, Exhibit 10.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on November 7, 2014.
5. In August 2014, the petitioner had gross income of \$2,382.75 (\$1,466 Social Security Disability + \$916.75 disability insurance) as a household of one person. She was no longer employed at that time, so she could not be eligible for the MAPP variant of Medicaid. The income limit the BadgerCare Plus variant of Medicaid was \$972.50. The Elderly/Blind/Disabled Medicaid variant of Medicaid has an income limit of \$591.67, and a non-exempt asset limit of \$2,000.
6. The petitioner’s income is over all of the income limits identified in Finding #5. Her non-exempt assets exceeded \$2,000 in August 2014. *E.g.*, she has a Keough plan with a balance of \$6,975. An early distribution from a Keough plan is not subject to the 10% penalty for a person who is fully and permanently disabled. *See*, IRS Publication 590, p. 56, “Exceptions.”
7. The petitioner is eligible for and receives Medicare.

DISCUSSION

A hearing officer 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 MA must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); *Income Maintenance Manual* § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 72 days after the date of the action. Thus, the petitioner’s hearing request was arguably untimely, with no jurisdiction existing for considering the merits of the case.

The August denial notice was very clear in denying the petitioner’s effort to be found eligible for either BadgerCare Plus or EBD Medicaid. That notice also told the petitioner that she was financially ineligible for “community waivers.” In this instance, Community Waivers equates to Family Care. The petitioner misunderstood this, and believes that the only notice she received of denial of Family Care was the ADRC letter from September, with no stated appeal deadline. I disagree with her position, and will dismiss this appeal of the Family Care denial as untimely. I have previously dismissed her appeal of the BadgerCare Plus and EBD Medicaid denial as untimely in Decision no. CWA/161793. However, for the sake of giving a fuller explanation to the petitioner, I include the language below.

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wisconsin Statute, §46.286, and is elaborated upon in Wisconsin Administrative Code, Chapter DHS 10. *See also Medicaid Eligibility Handbook*, Chapter 29, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

To be financially eligible for Family Care, a person must be an adult who meets the EBD Medicaid financial eligibility tests. There is a special, higher income limit for FC/Community Waivers (\$2,163

monthly, and “Group C” status) and an asset test. The non-exempt asset limit is \$2,000. The petitioner has assets in excess of the limit. Therefore, she was not financially eligible for Family Care.

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 13th day of March, 2015

\sNancy J. Gagnon
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 March 13, 2015.

La Crosse County Department of Human Services
Office of Family Care Expansion
ADRC-BCP@buffalocounty.com