



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/162032

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 17, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Trempealeau County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on January 08, 2015, at Whitehall, Wisconsin.

The issue for determination is whether the petitioner's appeal requesting backdated MA for the months of April and May, 2014 was timely for jurisdictional purposes.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Representative:**

[REDACTED] [REDACTED], daughter and POA  
[REDACTED]  
[REDACTED]

**Respondent:**

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

By: Tom Miller, ES Supervisor

Trempealeau County Department of Social Services  
36245 Main St.  
PO Box 67  
Whitehall, WI 54773-0067

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is an 83 year old resident of Trempealeau County who resides in a nursing home.
2. Petitioner's daughter and POA is [REDACTED] [REDACTED].
3. The petitioner was due for a renewal application to be completed by March 31, 2014, and failed to do so.
4. The county agency sent a March 19, 2014 Notice of Decision to the petitioner stating that her Nursing Home Long Term Care MA would discontinue effective April 1, 2014, due to failure to timely verify and complete her March, 2014 renewal application. See Exhibit 3. That notice stated there was a 45-day time limit for any appeal based upon the negative action taken by the county in Exhibit 3. The petitioner did not file any appeal within the 45 day time period.
5. The county agency sent an April 29, 2014 notice to petitioner's POA and representative, [REDACTED] [REDACTED] at Ms. [REDACTED]'s home address confirming that petitioner's MA was discontinued as of April 1, 2014, due to failure to timely verify and complete her renewal application. See Exhibit 4. Petitioner's POA admitted receiving Exhibit 4.
6. On November 18, 2014, petitioner's POA and representative faxed petitioner's appeal dated October 22, 2014 regarding the requested backdated BadgerCare eligibility to the Division of Hearings and Appeals (DHA), and that appeal was received at DHA on November 18, 2014. See Exhibit 2.
7. The petitioner was unable to establish that she had filed any MA appeal to DHA prior to November 18, 2014 regarding the requested backdated MA for the months of April and May, 2014.
8. The county agency sent a November 21, 2014 Notice to the petitioner stating that based upon her September 3, 2014 re-application, petitioner's MA was backdated to June 1, 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 AFDC or **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 county agency's refusal to backdate petitioner's Nursing Home MA retroactive for the months of April and May, 2014 (county stipulated that petitioner's MA re-opened as of June 1, 2014). DHA received petitioner's appeal on November 18, 2014, which is about six (6) months after the 45-day deadline for filing an appeal of the March 19, 2014 negative notice discontinuing petitioner's MA as of April 1, 2014.

During the January 8, 2015 telephonic hearing, petitioner's POA and representative, [REDACTED] [REDACTED], did not contest that the March 19, 2014 was correctly sent to the petitioner at the nursing home and that the April 29, 2014 notice was sent directly to her at her home address. In fact, Ms. [REDACTED] admitted receiving the April

29, 2014 notice (Exhibit 4). When asked by this Administrative Law Judge (ALJ) why she waited until November 18, 2014 to file her appeal on behalf of her mother with the Division of Hearings and Appeals (DHA), petitioner was unable to establish any good cause reason. Ms. [REDACTED] explained that she was living with her father and was providing care for her father during the spring and summer of 2014. However, Ms. [REDACTED] also admitted that she failed to check her mother's mail, and thus the notices were neglected. However, Ms. [REDACTED] admitted that she received the April 29, 2014 notice, and was thus informed by that notice that petitioner's MA had discontinued as of April 1, 2014. That notice informed Ms. [REDACTED] that petitioner needed to submit any request for any appeal to DHA at a specific address within 45 days of the negative effective date. She failed to do so.

The petitioner did not establish any problems with her mail delivery to credibly establish that the county agency did not properly and correctly send the notices to petitioner and to Ms. [REDACTED]. Furthermore, the county representative indicated that Exhibit 3 and 4 were not returned to the county agency as undeliverable. Moreover, there was no evidence that anyone in the county attempted to prevent the petitioner from filing a timely appeal at DHA. The petitioner was unable to establish any good cause reason why she waited until November 18, 2014 to appeal the county's April 1, 2014 discontinuance of petitioner's MA.

The petitioner was unable to establish any valid reason or good cause for not filing an appeal with DHA during March, April or May, 2014. The petitioner was also unable to provide any evidence that she had filed an appeal with DHA regarding the requested backdated period of April and May, 2014. The record is clear that petitioner's appeal was filed substantially more than 45 days after the March 19, 2014 and April 29, 2014 notices confirmed in writing to petitioner that her MA discontinued effective April 1, 2014. Accordingly, for the above reasons, I must conclude that petitioner did not appeal the April 1, 2014 MA discontinuance or lack of MA backdating within the 45-day time limit, and therefore the Division of Hearings and Appeals has no subject matter jurisdiction in this case.

### CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding petitioner's backdated BadgerCare benefits retroactive for the months of April and May, 2014, as petitioner's 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 6th day of February, 2015

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\sGary M. Wolkstein  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 6, 2015.

Trempealeau County Department of Soc Services  
Division of Health Care Access and Accountability