



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/163160

PRELIMINARY RECITALS

Pursuant to a petition filed January 09, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 29, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of the September 8, 2014, notice of denial 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: Katherine May

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received BadgerCare (BC) Plus benefits for an assistance group of two until September 30, 2014.

2. The petitioner applied for BC benefits on September 5, 2014. The respondent sent a September 8, 2014, notice to the petitioner at her correct address stating that effective September 1, 2014, her BadgerCare Plus application was denied due, in part, to income above the BC income eligibility limit. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) by October 24, 2014. See Exhibit 6.
3. The petitioner applied for BC benefits again on September 22, 2014. The respondent sent a September 23, 2014, notice to the petitioner at her correct address stating that effective September 1, 2014, her BadgerCare Plus application was denied due, in part, to income above the BC income eligibility limit. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) by November 10, 2014. See Exhibit 6.
4. Petitioner did not dispute that she received the September 8, 2015 or the September 23, 2014, notices.
5. The petitioner mailed a December 24, 2014 appeal to the Division of Hearings and Appeals (DHA) which was postmarked on January 9, 2015, and received at DHA on January 13, 2015. Exhibit 1.
6. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding any BC denial prior to January 9, 2015.

DISCUSSION

An administrative law judge (ALJ) or 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 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.** 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 denial of petitioner's BadgerCare Plus applications due to excess income. See Exhibit 1.

At hearing, petitioner did not dispute that she received the notices which stated that her BC Plus applications had been denied. She asserted that she had been going back and forth with the respondent regarding eligibility, and thought the dispute would be resolved. She stated that she filed the appeal when she was advised to do so. There was no evidence that the respondent attempted to prevent the petitioner from filing a timely appeal at DHA.

Based upon a review of the record in this matter, the petitioner has failed to provide any valid reason or good cause for not filing an appeal with DHA during the 45 day period after receiving the September 23, 2014, notice denying her BC application. Accordingly, I must conclude that because petitioner did not appeal the BC denial within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction in this matter.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the respondent's denial of petitioner's September, 2014, BC application, 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 25th day of March, 2015.

\sPeter McCombs
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 25, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability