



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/164073

PRELIMINARY RECITALS

Pursuant to a petition filed February 19, 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 March 12, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly terminated the Petitioner's benefits for the period of September 1 – 30, 2014.

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

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He has been determined to be disabled by the Social Security Administration.

2. On August 11, 2014, the agency issued a Notice of Decision to the Petitioner informing him that BC+ benefits for himself and his daughter would be terminated effective September 1, 2014 due to income over the program limit.
3. On August 12, 2014, the agency issued a Notice of Decision to the Petitioner informing him that his daughter was enrolled in BC+ effective September 1, 2014 with a monthly premium of \$23. The notice also informed him that he was eligible for healthcare benefits if he met a deductible of \$5,209.98 for the period of April 1, 2014 – September 30, 2014.
4. On August 19, 2014, the agency issued a Notice of Decision to the Petitioner at his address on [REDACTED] informing him that his daughter was enrolled in BC+ effective September 1, 2014 with a monthly premium of \$23. It also informed him that he was not eligible effective September 1, 2014 due to income over the program limit. The notice further stated that if he wished to appeal the decision, he must file a request for a hearing by October 17, 2014.
5. On August 21 and 22, 2014, the Petitioner contacted the agency with questions about his daughter's monthly premium. On August 26, 2014, the Petitioner contacted with agency with questions about his SSDI income being classified by the agency as SS income.
6. On August 22, 2014, the agency issued a Notice of Decision to the Petitioner informing him that his daughter was eligible for BC+ effective October 1, 2014 with a monthly premium of \$23. It further informed him that he was not enrolled due to income over the program limit, unless he met a deductible. The notice informed him of the right to appeal the agency's determination by filing a request for hearing by November 17, 2014.
7. On September 8, 2014, the Petitioner contacted the agency with questions about his deductible.
8. On September 9, 2014, a duplicate copy of the August 19, 2014 notice was sent to the Petitioner at the [REDACTED] address.
9. The Petitioner incurred medical expenses in September, 2014.
10. On September 23, 2014, the Petitioner filed an application for healthcare benefits with the agency. On September 26, 2014, the agency issued a Notice of Decision informing the Petitioner that his daughter was enrolled in BC+ effective September 1, 2014 with a monthly premium of \$23. It also informed him that he was eligible for MA if he met a deductible of \$8,425.98 for the period of October 1, 2014 – March 31, 2015. The notice informed him of a right to appeal the agency's determination by filing a request for hearing by November 11, 2014.
11. On November 18, 2014, an eligibility determination was made by the FFM that Petitioner was not eligible for healthcare benefits. On December 18, 2014, the Petitioner appealed the FFM decision. On January 13, 2015, the Petitioner received a Notice of Invalid Appeal Request from the FFM.
12. On February 19, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case 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 Medicaid, including BC+, must be filed within 45 days of the date of the action. Wis. Stats., § 49.45(5). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

In this case, the agency informed the Petitioner on August 19, 2014 and August 22, 2014 that his income was over the program limit for BC+ benefits and that he would be eligible only if he met a deductible. He was informed that his benefits would end effective September 1, 2014. The Petitioner's testimony was

inconsistent with regard to which notices he received or did not receive. In any case, on September 9, 2014, the agency mailed duplicate notices to the Petitioner. There was still sufficient time to file an appeal by the November 17, 2014 deadline.

The Petitioner testified that he did not file an appeal at that time because he had filed an application with the Marketplace and was not notified of the decision until January, 2015. Unfortunately, a pending case with the Marketplace does not toll the deadline for filing a Medicaid appeal. The Petitioner needed to appeal by the November 17, 2014 deadline to preserve his right to a hearing on the merits of the agency action. Therefore, I must conclude that the appeal is untimely and I cannot rule on the merits of the agency's denial of benefits for September, 2014.

I will note, however, that the Petitioner's argument that the agency should have provided "gap" coverage may have merit. He was not notified of the termination of benefits effective September 1, 2014 until the notice of August 19, 2014. It may have been too late at that point to apply for coverage through the marketplace to be effective September 1, 2014. Therefore, while I cannot order the agency to take action, I would ask the agency to use its discretion to review whether the Petitioner was eligible, under these circumstances, for gap coverage.

CONCLUSIONS OF LAW

The Petitioner's appeal was untimely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal 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 Milwaukee,
Wisconsin, this 6th day of May, 2015

\sDebra Bursinger
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 May 6, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability