



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact

DECISION

BCS/164613

PRELIMINARY RECITALS

Pursuant to a petition filed March 11, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marathon County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on April 16, 2015.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to Hear the merits of this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

BY: Redact, ESS
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact; 65 years old) is a resident of Marathon County, Wisconsin.

2. Petitioner received a written notice dated November 24, 2014 and entitled *About Your Benefits*; that notice informed petitioner that his BadgerCare Plus MA ["BC+"] would end effective January 1, 2015 ; the notice also informed petitioner of his appeal rights and of the process for requesting a Hearing, including the time limit for requesting a Hearing.
3. Petitioner requested a Hearing concerning the ending of his BC+; his request for a Hearing was made by way of a *Request For Fair Hearing* form dated March 9, 2015 and received by DHA on March 13, 2015 via U.S. Mail postmarked March 11, 2015

### DISCUSSION

DHA can only Hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning BC+ is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d) (2015); Wis. Stat. § 49.45(5)(a) (2013-14); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (February 2013); *BadgerCare Plus Eligibility Handbook* ["BC+ Handbook"] 29.2.; *Income Maintenance Manual* ["IMM"] 3.3.2. A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the action being appealed is the January 1, 2015 ending of petitioner's BC+. Petitioner's request for a Hearing was not filed until March 11, 2015. See, Wis. Admin. Code § HA 3.05(3)(c) (February 2013). This is outside of the allowable 45 days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

At the April 16<sup>th</sup> Hearing in this matter petitioner's wife testified that they did not request a Hearing sooner because her husband was sick and a lot was going on. This is unfortunate, but it does not create jurisdiction where none otherwise exists.

### CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this matter.

**NOW, THEREFORE, it is**

### ORDERED

That 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 12th day of May, 2015

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\sSean P. Maloney  
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 12, 2015.

Marathon County Department of Social Services  
Division of Health Care Access and Accountability