



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/164781

PRELIMINARY RECITALS

Pursuant to a petition filed March 20, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on April 14, 2015, at Sheboygan, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

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: Kris Schmidt, Economic Support Supervisor
Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. On June 18, 2014, the county agency sent a written notice of negative action to the Petitioner, advising him that his BadgerCare+ benefits would be ending effective July 1, 2014, because he had not completed a renewal. (Exhibit 3)

3. On July 17, 2014, the Petitioner called the agency and submitted a new application for benefits. He signed and mailed the signature page of the application on July 29, 2014. The agency received the signature page on July 30, 2014. (Exhibit 2)
4. On August 28, 2014, the county agency sent the Petitioner a notice indicating that his son would have BadgerCare+ benefits from July 1, 2014 going forward and that he would have BadgerCare+ benefits from August 1, 2014 going forward. (Exhibit 6)
5. The Petitioner filed a hearing request that was received by the Division of Hearings and Appeals on March 20, 2015. (Exhibit 1)

DISCUSSION

The Petitioner filed an appeal to contest the closure of his case effective July 1, 2014 and the subsequent denial of BadgerCare+ benefits for July 1, 2014. The Petitioner argues that the agency incorrectly budgeted his income and even if the agency correctly determined that the Petitioner was over the income limit for July 2014, it should have placed him in a BadgerCare+ extension for July 2014.

However, 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, the reduction of benefits, or as in this case, the termination of an ongoing case.

The Petitioner's appeal was filed 287 days after his benefits were terminated on July 1, 2014, and 228 days after the agency issued the August 28, 2014 notice denying the Petitioner BadgerCare+ coverage for July 2014. Thus, Petitioner's appeal was untimely, and no jurisdiction exists for considering the merits of the case.

The Petitioner argues that the rules should not apply in this case, because he was given bad advice from the call center to wait on his renewal until he completed a change in residence. The Petitioner argues that it is particularly unfair to him, because the Petitioner had surgery in July 2014 mistakenly believing his health insurance was in order and he is now liable for a \$17,000 medical bill.

The Petitioner's anger and frustration is understandable. However, because his appeal is untimely, I have no jurisdiction to review the merits of his appeal. Further, administrative law judges do not have the ability to make a decision based upon what a party believes to be fair, but must instead, apply the law as it is written.

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 Milwaukee,
Wisconsin, this 7th day of May, 2015.

\sMayumi M. Ishii
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 7, 2015.

Sheboygan County Department of Human Services
Division of Health Care Access and Accountability