



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/165722

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 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 May 19, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly denied the Petitioner's application for healthcare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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.
2. On June 27, 2014, the Petitioner submitted an application for BadgerCare Plus (BC+) and FoodShare (FS) benefits. The Petitioner did not report any household income on the application.
3. On June 30, 2014, the agency conducted an interview with the Petitioner. He reported that his job with [redacted] ended in March, 2014. According to case comments, he reported that he works side jobs.

4. On July 1, 2014, the agency issued a Notice of Decision to the Petitioner informing him that his application for BC+ benefits was denied due to income over the program limit. The notice also informed the Petitioner of the right to appeal that determination by submitting a request for hearing to the Division of Hearings and Appeals by August 18, 2014.
5. On July 1, 2014, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of self-employment income. The notice indicates that the information was needed for Family Planning Services and FS benefits. Due date for the information was July 10, 2014 for Family Planning and July 28, 2014 for FS.
6. On July 17, 2014, the agency issued a Notice of Decision to the Petitioner informing him that his application for BC+ benefits was denied due to failure to provide verification and income over the program limit. The notice also informed the Petitioner of the right to appeal that determination by submitting a request for hearing to the Division of Hearings and Appeals by September 2, 2014.
7. On December 16, 2014, the Petitioner submitted another application for BC+ benefits. In the application, he reported earned income of \$100/week for a job with [REDACTED] which started on December 16, 2014.
8. On December 24, 2014, the agency issued a Notice of Proof Needed to the Petitioner requesting income verification by January 2, 2015.
9. On January 16, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his application for BC+ was denied due to failure to provide requested verification. The notice also informed the Petitioner of the right to appeal that determination by submitting a request for hearing to the Division of Hearings and Appeals by March 3, 2015.
10. On April 28, 2015, the Petitioner submitted a request for a hearing to 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, including a denial of healthcare benefits, by an agency must be filed within 45 days of the date of the action. Wis. Stats., §49.45(5).

In this case, the agency concedes there were some errors in processing the Petitioner's application. Specifically, I note that in July, 2014, the agency denied the Petitioner's application for income over the household limit though the Petitioner had not provided any income verification and the agency did not issue a verification request for BC+ benefits. I note that the Petitioner did not provide the requested information for purposes of Family Planning or FS benefits.

At the hearing, the Petitioner testified that he incurred medical expenses in June, 2014 due to a motor vehicle accident and he is, therefore, seeking a review of the agency's determination denying his application for benefits in June, 2014. The Petitioner stated at the hearing that he did not realize at the time that he had a right to a hearing at that time.

Though there may be issues with the agency's processing of the application, the notice of decision issued to the Petitioner on July 1, 2014 clearly indicated that he must file a request for a hearing on the agency action by August 18, 2014. Likewise, the notice dated January 16, 2015 states that a request for hearing must be filed by March 3, 2015.

Based on the evidence, I find that the Division of Hearings and Appeals has no jurisdiction over the agency action denying the Petitioner's BC+ application in July, 2014 and January, 2015 due to the Petitioner's untimely filing of a request for hearing on April 28, 2015. It is my understanding from the hearing that the Petitioner re-applied for BC+ benefits in April, 2015 and that he currently has an open case. However, I do not have jurisdiction to rule on the agency actions in July, 2014 or January, 2015.

CONCLUSIONS OF LAW

The Petitioner's appeal was not timely with regard to the agency's denial of BC+ benefits in July, 2014 or January, 2015.

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 10th day of July, 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 July 10, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability