



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/167105

PRELIMINARY RECITALS

Pursuant to a petition filed July 08, 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 July 29, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely.

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: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner BadgerCare+ case was reviewed in November and December 2014.
3. The agency determined that Petitioner's income was \$1368.08 as of December 2014. This consisted of gross earned income for Petitioner from Milwaukee Public Schools of \$652.20 per month and from a private employer of \$733.88 per month. Petitioner's child also had income but

was not counted. Petitioner’s private employer income ended and she was BadgerCare+ eligible as of January 1, 2015.

- 4. Petitioner was sent a Notice of Decision dated December 22, 2014 that inform Petitioner that her daughter was eligible for BadgerCare+ but that she (Petitioner) was not because her income was over the BadgerCare+ program income limit. That Notice contains appeal instructions that inform Petitioner that the appeal deadline for a healthcare issue was February 6, 2015. The notice was sent to Petitioner at the above address. Petitioner’s daughter was covered by BadgerCare+ for December 2014 forward.
- 5. Petitioner filed this appeal on July 8, 2015 after receiving a bill for herself of about \$319 for a December 2014 medical service for herself.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the agency decision. §49.45(5)(a), Wis. Stats. This appeal was filed with the Division of Hearings and Appeals past the last appeal deadline noted on the Notices of Decision described in the Findings – February 6, 2015 is the deadline noted on the December 22, 2014 Notice. The Division of Hearings and Appeals has no authority to expand the appeal deadline; thus this appeal is untimely.

I do note that Petitioner argues that her income was under the income limit of \$1311.00 for December 2014 as her [REDACTED] income was only for about half the month because of the holiday break. While the appeal is untimely and, further, the record here does not contain actual wage information for Petitioner for December 2014 she may provide that information to the local agency and ask that the agency evaluate backdated eligibility for December 2014 based on a *BadgerCare+ Eligibility Handbook (BEH)* provision that does say that backdating can be requested at any time. *BEH, §25.8.1.*

CONCLUSIONS OF LAW

That Petitioner’s appeal is untimely.

THEREFORE, it is

ORDERED

That this 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 22nd day of September, 2015

\sDavid D. Fleming
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 September 22, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability