



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/167477

PRELIMINARY RECITALS

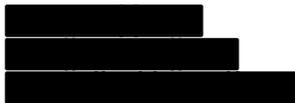
Pursuant to a petition filed July 21, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on September 17, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's 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: Madeline Rice

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Racine County.
2. In February, 2015, the Petitioner applied for healthcare benefits.
3. On March 17, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his application was approved and he was enrolled in BC+ effective November 1, 2014. It further

informed him of the right to appeal the agency's determination by filing a request for a hearing with the Division of Hearings and Appeals by May 4, 2015. On April 29, 2015, a duplicate notice was sent to the Petitioner, per his mother's request.

4. The agency received information that Petitioner was working for [REDACTED], Esq. law offices.
5. On June 15, 2015, the agency received an alert that the Petitioner would receive Social Security income of \$367/month beginning July 1, 2015.
6. On June 15, 2015, the agency issued a Notice of Decision to the Petitioner notifying him that his healthcare benefits would end of July 1, 2015 due to income exceeding the program limits. This is based on unearned income from Social Security of \$367/month and earned income of \$840/month.
7. On June 16, 2015, the agency issued a Notice of Proof Needed to the Petitioner requesting financial information with a due date of June 25, 2015.
8. On June 25, 2015, the Petitioner submitted pay statements from [REDACTED] to the agency. His gross wages were as follows:
 

May 29, 2015	\$196.74
June 5, 2015	\$317.43
June 12, 2015	\$193.68
June 19, 2015	\$351.18
9. In response to the agency's request for financial information, the Petitioner reported a checking account with a balance of \$7,516 and an IRA with a balance of \$1,810
10. On June 30, 2015, the agency issued a Notice of Decision to the Petitioner via email informing him that his application was denied due to income and assets exceeding the program limit effective July 1, 2015. This was based on average earned income of \$264.78/week from [REDACTED], \$840/month from [REDACTED], Esq. and Social Security income of \$367/month. It was also based on assets of \$7,516, the IRA of \$2,745 and cash of \$200.
11. On July 21, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.
12. On July 25, 2015, the Petitioner received a denial letter from the Health Insurance Marketplace. It informed him that his application would be transferred to BC+ for a determination of his eligibility.

### DISCUSSION

A person who is elderly, blind or disabled (EBD) cannot receive medical assistance if his assets exceed \$2,000 or income exceeds \$591.67/month. Wis. Stat. §§ 49.46(1) and 49.47(4); Wis. Admin. Code, § DHS 103.06(1)(a); Medicaid Eligibility Handbook (MEH), § 39.4. Medicaid eligibility can be backdated up to three months prior to the month of application. MEH, § 2.8.2.

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 an agency concerning MA must be filed within 45 days of the date of the action. Wis. Stat. § Sections 49.45(5).

At the hearing, the Petitioner testified that he disagrees with the agency's backdating his application to November 1, 2014. He believes that the application should be backdated to October 1, 2014. The agency notified the Petitioner of this determination on March 17, 2015 and again on April 29, 2015. The

deadline for appealing that determination was May 4, 2015. This appeal was not filed until July 21, 2015. Therefore, I have no jurisdiction over that issue as there was not a timely appeal of the decision.

With regard to the agency determination in June that the Petitioner is not eligible for MA due to income and assets exceeding the program limit, I do have jurisdiction as the appeal was timely filed for that determination. The Petitioner disputes the income counted by the agency for his employment with ██████ ██████ Esq. The Petitioner did not dispute that he receives \$367/month in Social Security and that he had earned income from ██████ as reported on his pay statements. This income, even without the income from ██████ Esq., clearly exceeds the income limit of \$561.67. The Petitioner also did not dispute his assets exceed the limit of \$2000.

The Petitioner also testified that he has applied to the Marketplace and was denied on the grounds that he is eligible for MA. In addition, the Petitioner testified that he is working only one day/week at ██████

Based on the information provided, the agency properly determined that the Petitioner was not eligible for MA. Even if the Petitioner had been eligible for gap-filling based on a difference in income calculations between the agency and the marketplace, his assets still clearly exceeded the program limit for MA. Further, with regard to the Petitioner's reduced hours and income, the Petitioner may reapply based on a change in his work circumstances.

### CONCLUSIONS OF LAW

With regard to backdating the Petitioner's February, 2015 application, the appeal is not timely.

With regard to the agency's denial of MA effective July 1, 2015, the agency properly determined that the Petitioner was not eligible due to income and assets exceeding the program limit.

**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

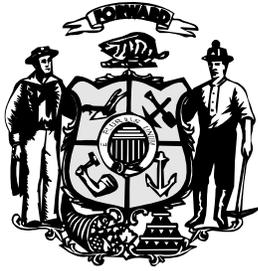
this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

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 11th day of November, 2015

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\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 November 11, 2015.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability