



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/168278

PRELIMINARY RECITALS

Pursuant to a petition filed August 25, 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 September 22, 2015, at Milwaukee, Wisconsin.

NOTE: Post hearing the parties submitted additional documentation. An Employer Verification of Earnings form dated May 13, 2015, has been marked as Exhibit 5 and a packet dated October 13, 2015, containing additional medical records from Petitioner has been marked as Exhibit 6.

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: Simone Johnson, HSPC Sr.
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.

2. On April 8, 2015, the Petitioner called the agency complete her renewal. (Exhibit 4, pg. 7)
3. On April 9, 2015, the agency sent the Petitioner a notice, indicating that her BadgerCare+ benefits would be ending effective May 1, 2015, because she was over the income limit. (Exhibit 4, pgs. 15-20)
4. On April 30, 2015, the agency sent the Petitioner another notice, advising her that her BadgerCare+ benefits were ending, effective May 1, 2015, because she was over the income limit. (Exhibit 4, pgs. 21-25)
5. On May 18, 2015, the Petitioner provided the agency with an Employer Verification of Earnings form, indicating that she works 39 hours per week, earning \$8.60 an hour. The form also indicated that the Petitioner had pre-tax deductions of \$38.50 bi-weekly for health insurance, \$6.85 bi-weekly for dental insurance, and \$33.50 bi-weekly for a retirement contribution. (Exhibit 5)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 24, 2015. (Exhibit 1)

DISCUSSION

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 medical assistance 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, termination of benefits.

The date of action was May 1, 2015. Thus, Petitioner's appeal needed to be filed by June 16, 2015. The Petitioner did not file her appeal until August 24, 2015. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Even if I could review the merits of Petitioner's appeal, I would find that the agency acted correctly.

Effective April 1, 2014, an adult must have household income must be below 100% the Federal Poverty Level, in order to be eligible for the BadgerCare+ health plan and all available gross income must be counted. *BEH §16.1* Prior to this, the income limit was 200% of FPL. *Id.*

On May 13, 2015, the Petitioner submitted an EVFE indicating that she was working 39 hours per week and earning \$8.60 per hour. This would make her income:

$$39 \text{ Hours} \times \$8.60/\text{hour} = \$335.40 \text{ per week}$$

$$\$335.4 \times 4 \text{ weeks per month} = \$1341.60 \text{ per month.}$$

Per BEH §16.3.2 certain deductions for insurance premiums and retirement contributions that are withheld pre-tax from a paycheck are allowed. So, Petitioner's pre-tax deductions work out as follows:

$$\$38.50 \text{ bi-weekly for health insurance} \times 2 \text{ pay periods per month} = \$77.00$$

$$\$6.85 \text{ bi-weekly for dental insurance} \times 2 \text{ pay periods per month} = \$13.70$$

$$\$33.50 \text{ bi-weekly for retirement contributions} \times 2 \text{ pay periods per month} = \$67.00$$

Thus, Petitioner's total countable monthly income works out to be:

$$\$1341.60$$

$$-\$77.00$$

$$-\$13.70$$

-\$67.00

\$1183.90

100% of FPL for an assistance group size of one is \$980.83. *BEH §50.1*. Petitioner's income of \$1183.90 per month was over the \$980.83 - 100% FPL income limit. As such, the agency correctly ended her BadgerCare+ benefits.

I also note that under *BEH§7.1.2*, Petitioner might not have been eligible for BadgerCare+ benefits, anyway, because she had access to employer sponsored health insurance.

The Petitioner argues that the rules should not apply to her. The Petitioner asserts that it is not fair to deny her BadgerCare+ coverage, because she does not make that much money and because suffers from a chronic and sometimes debilitating health condition.

No one is saying that Petitioner is getting rich working at a grocery store; no one is trying to minimize her health condition and no one is disputing the fact that the Wisconsin legislature and current administration have caused some people great hardship by dropping the income limit to 100% FPL. However, it has been long held that administrative law judges do not possess any equitable powers but must apply the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS).

CONCLUSIONS OF LAW

Petitioner's 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 28th day of October, 2015.

\sMayumi M. Ishii
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 October 28, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability