



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/173178

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on April 19, 2016, at Eau Claire, Wisconsin.

The issue for determination is whether the department provided proper notice before ending the petitioner’s medical assistance 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:

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1.]The petitioner (CARES #) is a resident of Eau Claire County.

2. The petitioner received medical assistance based upon her pregnancy. On February 16, 2016, the department prepared a notice to inform her that her benefits would end on February 29, 2016, because she was no longer pregnant.
3. The petitioner's baby was born in December 2015.
4. The department contends that it emailed the February 16, 2016, notice to the petitioner, but its records do not indicate that it emailed anything to her on that date.
5. The department never mailed this notice to the petitioner.

DISCUSSION

The department must mail a written notice to a recipient at least 10 days before ending medical assistance benefits:

TIMELY NOTICE. The agency shall give the recipient timely advance notice and explanation of the agency's intention to terminate MA. This notice shall be in writing and shall be mailed to the recipient at least 10 calendar days before the effective date of the proposed action. The notice shall clearly state what action the agency intends to take and the specific regulation supporting that action, and shall explain the right to appeal the proposed action and the circumstances under which MA is continued if a fair hearing is requested.

Wis. Admin. Code, § DHS 103.09(4)

The petitioner received medical assistance for her pregnancy. Those benefits are supposed to continue for 60 days after the pregnancy ends. *BadgerCare Plus Handbook*, § 8.1. Her pregnancy ended in December 2015. On February 16, 2016, the department prepared a notice to inform her that her benefits would end on February 29, 2016. It contends it emailed the notice to her, but she claims she never received it. Her contention is supported by the fact that the department's records do not indicate that it sent any email to her on February 16, 2016. Moreover, even if the department had emailed the notice, this failed to comply with its requirement that it mail the notice. Mail and email are two distinct means of delivering something, and the difference is not trivial because all sorts of email never reaches its destination because of various filters on the email programs.

The petitioner seeks benefits through March 2016 because she had emergency medical care that month. She contends that she was not aware that she was receiving only pregnancy medical assistance and assumed her benefits would continue. Although I am somewhat skeptical of her explanation, the department's notice is legally inadequate. Therefore, it improperly ended her benefits. As a result, I will grant her request that her benefits be reinstated for March 2016.

CONCLUSIONS OF LAW

The department did not provide proper notice to the petitioner before ending her medical assistance benefits.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner's medical assistance benefits retroactive to February 29, 2016, and to continue those benefits through March 31, 2016.

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.

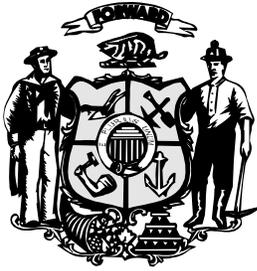
APPEAL TO COURT

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 Madison,
Wisconsin, this 31st day of May, 2016

\sMichael D. O'Brien
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 May 31, 2016.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability