



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: BCS - 207937

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on February 20, 2023, under Wis. Stat. § 49.45(5)(a), to review a decision by the Rock County Human Services regarding Medical Assistance (MA), a hearing was held on May 17, 2023, by telephone.

The issue for determination is whether the respondent correctly commenced petitioner's MA enrollment as of October 1, 2022.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: Lauri Bongle  
Rock County Human Services  
1900 Center Avenue  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County.

2. Petitioner applied for MA benefits on August 9, 2022, with a backdate request to July 1, 2022. At that time, petitioner did not recall his Social Security number (SSN).
3. The respondent mailed to petitioner a request for verification of his SSN on August 10, 2022. The request was mailed to the address he had provided of [REDACTED].
4. The respondent subsequently denied petitioner's health care application on September 8, 2022 because the SSN was not provided. Petitioner was informed of the denial via written notice dated September 9, 2022.
5. Petitioner submitted a new MA application on January 27, 2023, requesting 3-month backdating. His SSN was provided at that time, and his MA benefits were opened effective October 1, 2022.

### DISCUSSION

BadgerCare Plus (BCP) is a state and federal MA program that provides health coverage for low-income Wisconsin residents. As part of the BCP eligibility determination, the agency is required to obtain an applicant's SSN to determine financial eligibility. See *BCP Handbook*, §6.1.1; available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus>.

The agency must process an application for BCP within 30 days of the date the agency receives the application. *BCP Handbook*, §9.2. Eligibility for BCP should not be denied for failure to provide required verification until the later of the 10th day after requesting verification, or the 30th day after the application filing date. *Id.* The agency must advise the applicant of the specific verification it requires and give the applicant a minimum of 10 calendar days to provide any necessary verification. *Id.* The agency cannot require one particular type of verification when various types are adequate and available. *Id.* at §9.8. The agency must assist the applicant in obtaining verification if the applicant requests help or has difficulty in obtaining the verification. *Id.*

The agency properly requested verification of the petitioner's SSN when he applied. It properly issued the request for proof, mailed that to the address that he provided, gave him options on how to verify, and gave him more than 10 days to verify the information. There is no record of petitioner asking the agency to assist him in getting the documentation. He did not provide the information by the 30-day deadline for processing his application. The agency then properly issued the Notice of Decision, indicating that the application would be denied due to failure to provide verification.

The agency received petitioner's SSN when he applied again in January of 2023. He again requested a backdate, which was granted. Regarding backdating, the BadgerCare Plus Handbook instructs:

All non-pregnant, non-disabled parents and caretakers may have their eligibility backdated up to the first of the month, three calendar months prior to the month of application for any of the months in which their family income was at or below 100% FPL.

Childless adults with assistance group income under 100% FPL are eligible for backdating.

...When backdating BadgerCare Plus, do not go back further than the first of the month, three months prior to the application month. Certify the person for any backdate month in which they would have been eligible had they applied in that month. In the case of

children, certify the person for any backdate month in which they would have been eligible had they applied in that month and in which their assistance group income was at or below the appropriate FPL level for their age group.

*BCP Handbook*, §25.8.1.

Petitioner incurred medical bills for treatment received at the end of September, 2022. As such, his October 1, 2022 BCP enrollment date leaves these bills uncovered. Petitioner testified that he did not receive the verification request or the benefits denial notice. Where the evidence presented demonstrates that a notice was correctly mailed, this fact creates a rebuttable presumption of delivery that a petitioner must overcome with evidence demonstrating that the notice was not actually received.

This interpretation is confirmed by Wisconsin case law:

It is well established that the mailing of a letter creates a presumption that the letter was delivered and received. *See, Nack v. State*, 189 Wis. 633, 636, 208 N.W. 487(1926), (citing Wigmore, *Evidence* 2d. ed.) § 2153; 1 Wigmore, *Evidence* (2<sup>nd</sup> ed.) § 95) *Mullen v. Braatz*, 179 Wis. 2d 749, 753, 508 N.W.2d 446(Ct.App.1993); *Solberg v. Sec. Of Dept of Health & Human Services*, 583 F.Supp. 1095, 1097 (E.D.Wis.1984); *Hagner v. United States*, 285 U.S. 427, 430, 52. S.Ct. 417, 418(1932).

\*\*\*(Portions of discussion not relevant here omitted).

This evidence raises a rebuttable presumption which merely shifts to the challenging party the burden of presenting credible evidence of non-receipt. *United States v. Freeman*, 402 F.Supp. 1080, 1082(E.D.Wis.1975). Such a presumption may not, however, be given conclusive effect without violating the due process clause. *United States v. Bowen*, 414 F.2<sup>nd</sup> 1268, 1273(3d.Cir.1969); *Mullen v. Braatz*, 179 Wis. 2d at 453. If the defendant denies receipt of the mailing, the presumption is spent and a question of fact is raised. (Examiner note: Citations omitted here.) The issue is then one of credibility for the factfinder. The factfinder may believe the denial of receipt, or the factfinder may disbelieve the denial of receipt.

See *State ex. Rel. Flores v. State*, 183 Wis.2d 587, at 612-3 ((1994).

Petitioner offered nothing of substance to rebut this presumption other than to state that it was not received. That is insufficient. Based on the preponderance of the evidence, I must find that the agency acted correctly.

As petitioner has not established any error on the part of the agency, this matter will be dismissed. The petitioner's argument essentially asserts that it is unfair not to backdate his benefits even for a few short days, under the specific circumstances of his case. While I empathize with petitioner, it is the long-standing policy of the Division of Hearings & Appeals, Public Assistance & Social Services Unit, that the Department's assigned administrative law judges do not possess equitable powers, and cannot base a ruling upon an idea of what is deemed fair. *See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, the department correctly commenced petitioner's BCP eligibility as of October 1, 2022, no exception to the commencement date applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

**CONCLUSIONS OF LAW**

The agency correctly denied petitioner’s request for a September 1, 2022 BCP enrollment date, as backdated benefits can only extend back three months prior to the date of application.

**THEREFORE, it is ORDERED**

The petition for review herein be 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, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, 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**

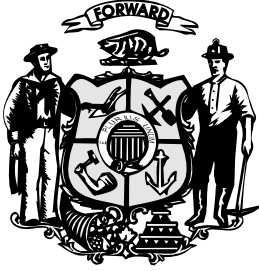
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 6th day of June, 2023



\s \_\_\_\_\_  
Peter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on June 6, 2023.

Rock Cty Human Services  
Division of Health Care Access and Accountability