



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/170111

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on February 04, 2016, at Kenosha, Wisconsin.

The issue for determination is (1) whether the petitioner’s appeal is timely, and (2) if timely, whether the agency properly denied the petitioner’s appeal for failing to provide the requested verification.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Karen Mayer
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) was a resident of Kenosha County. Since the petitioner’s application for institutional MA coverage, the petitioner was moved from the nursing home to hospice care. The petitioner died in hospice sometime before December 25, 2015.

2. On July 15, 2015 the petitioner applied for Institutional MA coverage. She requested that coverage be backdated to April 2015.
3. On July 24, 2015 the agency sent the petitioner a request for verification. The agency requested verification of two of whole life insurance policies. One policy was from [REDACTED]. The other policy was from [REDACTED]. In addition, the agency requested savings and checking account information and her residence account information from the nursing home where she was living. This verification was due by August 14, 2015. The agency did not receive the verification requested.
4. On August 17, 2015 the agency sent the petitioner a notice stating that her application for MA was denied for failing to provide verification. The notice went on to state that the petitioner had until October 2, 2015 to appeal the agency's denial to the Division of Hearings and Appeals.
5. On September 14, 2015 the petitioner or her representative provided the requested bank statements. The bank statement from April 2015 showed a checking account balance as of April 14, 2015 in the amount of \$4,087.40. The bank statement from May 2015 showed a checking account balance as of May 14, 2015 in the amount of \$3,792.52. The last statement was from May through August 2015. The checking account balance as of August 14, 2015 was \$451.52. Two checks had been written. Check number 474 was written on May 16, 2015 in the amount of \$3,046.00. Check number 475 was written on June 8, 2015 in the amount of \$295.00. The bank statement does not provide any additional information about the checks included who the checks were written to or what the checks were used to pay. There appears to be a check for \$295 written each month. The final bank statement is from July 2015 with an account balance as of July 14, 2015 in the amount of \$156.52.
6. On September 25, 2015 the petitioner verified her [REDACTED] Insurance Policy. The face value of this policy was \$3,000. The cash surrender value was \$1,671.00.
7. The agency did not receive verification of the petitioner's [REDACTED] insurance policy. At the hearing it was disclosed that the cash value of that whole life insurance policy was \$1,871.00.
8. After receiving the above-listed verifications the agency sent the petitioner a second denial notice stating that her application had been denied for failing to provide the requested verification. This notice stated that the petitioner had until November 13, 2015 for the Division of Hearings and Appeals to receive her Request for Fair Hearing.
9. On November 12, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing. This was the post-mark date on the envelope.

DISCUSSION

Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. Here, the petitioner applied for institutional MA coverage on July 15, 2015. The agency sent the petitioner a notice stating that her application had been denied for failing to provide verification on August 17, 2015. The Division of Hearings and Appeals received the petitioner's Request for Fair Hearing on November 12, 2015. This is well beyond the 45 day appeal time limit, and thus I am without jurisdiction to decide this case on the merits.

I note that the agency sent the petitioner a second denial notice after this first denial notice. At this point the petitioner was being assisted by an attorney who appears to be from the nursing home's parent company. This attorney is not licensed in Wisconsin, but was acting as the petitioner's representative for the purposes of her MA application. Although this second notice listed a later due date, I do not believe that this notice acted to extend the petitioner's appeal deadline. This denial notice did not change the first

denial notice that specifically stated the petitioner had until August 17, 2015 to Request a Fair Hearing. After that date the Division of Hearings and Appeals no longer has jurisdiction to hear this matter.

I note that if I had jurisdiction I would decide against the petitioner. Under MA rules assets must be verified. Wis. Adm. Code, §DHS 102.03(3)(h); MA Handbook, Appendix 20.3.5. To verify means to establish the accuracy of verbal or written statements about an applicant's circumstances. Handbook, App. 20.1.1. An application for MA "shall be denied when the applicant or recipient is able to produce required verifications but refuses or fails to do so." Wis. Adm. Code, §DHS 102.03(1); see also the MA Handbook, App. 2.7.1.

The department takes a strict position concerning the completion of the application process. Once the time period for providing the verification has passed, the application is over. "If less than 30 days has passed since the client's eligibility was denied, allow the client to re-sign and date the application or page one of the CAF [Combined Application Form] *to set a filing date*. If more than 30 days has passed since a client's eligibility was denied and the client is not open for any other program, the client must file a new application to reopen his/her MA." Handbook, App. 2.9.2, italics added. The department does not allow for discretionary extensions in cases where information is not provided due to simple errors.

The MA asset limit for an individual is \$2,000. Wis. Stat., §49.47(4)(b)3m. If assets are above that limit, the person is not eligible for MA. Included in assets which must be counted against the MA limit are cash values of life insurance policies if the total face value of the policies is more than \$1,500. Wis. Adm. Code, §HFS 103.06(10); MA Handbook, Appendix 16.7.5. Income is not counted as an asset in the month it is received. Handbook, App. 16.1. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations.

Here the agency requested verification with a due date of August 14, 2015. The petitioner did not provide the verification by the due date, and thus the agency properly denied her application for failing to provide the requested verification.

The petitioner argues that the agency must approve an application when an applicant does not have the power to provide the verification. In this case the petitioner, via her family, had the power to provide the requested verification. Evidence of this is that by the end of September 2015 the petitioner was able to get nearly all of the requested verification to the agency. Although this was beyond the due date, it still shows that her family had the ability to verify.

The late verification case shows that the petitioner was over the MA asset limit, and was not eligible for institutional MA coverage. Although verification should not be used as a sword to deny otherwise eligible applicants MA coverage, verification must be used to ensure that only MA eligible applicants are approved. Here this petitioner would have been over that asset limit.

The petitioner's final argument is that the Americans with Disabilities Act (ADA) prohibits the Department from denying services to the petitioner because of her disability. She does not specify what her disability is. However, the bigger problem with this argument is that the agency did not deny services to the petitioner because of any disability. Rather, the agency denied services because the petitioner failed to provide timely verification. For all these reasons, I would sustain the agency's actions if I had jurisdiction.

CONCLUSIONS OF LAW

The petitioner's appeal is untimely, and I am without jurisdiction to decide the merits of the case.

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 11th day of March, 2016

\sCorinne Balter
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 March 11, 2016.

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