



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████████████
██████████

DECISION

CWA- 170320

PRELIMINARY RECITALS

On November 25, 2015, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03, to challenge a decision by the Department of Health Services, Bureau of Long-Term Support regarding Medical Assistance. The hearing was held on July 7, 2016, by telephone.

This matter was originally scheduled for hearing on January 19, 2016.

On January 14 2016, the Petitioner's father submitted a letter that was labeled an adjournment request. Staff at the Division of Hearings and Appeals (DHA) incorrectly concluded that the letter was a request to withdraw the appeal, likely due to the last two sentences, which read, "The ICA Summary Statement concluded that since there has been no change to ██████████ current service level authorizations, the ICA believed that there is no matter for determination at this time. We agree with this conclusion and request that the current hearing date scheduled for 1/19/16 be adjourned." Consequently, on January 15, 2016, the Assistant Administrator for DHA dismissed the appeal.

On January 29, 2016, Petitioner's father called the Division of Hearings and Appeals and indicated that he did not intend to withdraw the appeal and that he only wanted to reschedule the hearing to see if they could resolve concerns over an impending reduction in Petitioner's IRIS budget. Consequently, the matter was reopened and rescheduled to March 15, 2016.

On March 4, 2016, Petitioner's father submitted a fax, asking to reschedule the hearing, because they were waiting for a budget determination and a notice of action, and because of other personal reasons. The matter was then rescheduled to May 3, 2016.

On April 26, 2016, Petitioner's father submitted a fax asked to reschedule, because the parties were still working out a budget for the Petitioner. Accordingly, the matter was rescheduled to June 7, 2016.

On June 2, 2016, the Petitioner's father submitted a fax, asking to reschedule, because they were still waiting for a final determination concerning the Petitioner's budget. Accordingly, the matter was rescheduled to July 7, 2016.

There is no issue for determination by the Division of Hearings and Appeals at this time.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services (DHS)
1 West Wilson Street
Madison, Wisconsin 53703

By: Attorney [REDACTED]

[REDACTED]
22 E. Mifflin St.
Madison, WI 53703

For

TMG (The Management Group)
1 South Pickney Street
Suite 320
Madison, WI 53703-2887

ADMINISTRATIVE LAW JUDGE:

Mayumi Ishii
Division of Hearings and Appeals

DISCUSSION

The Petitioner's parents, on the Petitioner's behalf, had filed an appeal to contest the reduction of her IRIS Budget, because the Petitioner's IRIS consultant had advised them that the Petitioner's budget was going to be cut in half and provided them with an Individual Support and Service Plan reflecting the reduced budget. However, the IRIS Consulting Agency has not yet reduced the budget.

Attorney [REDACTED] indicated that TMG is still working on processing budget amendments and has not made a final determination regarding the Petitioner's budget, even though the process has been on-going for at least one year. It is undisputed that the Petitioner's budget was not actually reduced and has remained at the same level during this entire time, and will continue to be at the same level, until the budget amendment process is completed.

Attorney [REDACTED] further indicated that once the process is done, if there is a reduction in budget, a Notice of Decision will be issued, as is required under 42 C.F.R. §§431.206, 431.210 and 431.211. The notice should advise the Petitioner/her guardians of that determination and of the Petitioner's right to request a hearing under 42 C.F.R. §431.220, if, "he or she believes the agency has taken an action erroneously." *See also Wis. Admin. Code §104.10 (5)(1).*

Because DHS/TMG has not made a final determination concerning the Petitioner's budget, the issue is not ripe for adjudication. Petitioner's father indicated that he understood the situation and agreed to a

dismissal of the current appeal, with the understanding that Petitioner may file a new appeal, if her guardians disagree with the final budget determination. Accordingly, this appeal will be dismissed. If I have misunderstood the situation, the Petitioner's guardians are directed to the rehearing instructions below.

CONCLUSIONS OF LAW

There is no issue for determination by the Division of Hearings and Appeals at this time.

THEREFORE, it is ORDERED

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, **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 8th day of July, 2016

\s _____
Mayumi 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 July 8, 2016.

Bureau of Long-Term Support

Attorney [REDACTED]