



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MGE/170721

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 13, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

[Redacted address]

Respondent:

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

By: [Redacted name]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. On April 1, 2015 the petitioner applied for institutional Medicaid coverage.

3. On July 31, 2015 the agency sent the petitioner a notice stating that her application for institutional Medicaid had been denied because she failed to provide the requested verification. The notice went on to state that the petitioner had until September 15, 2015 to Request a Fair Hearing.
4. On December 14, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
5. The petitioner reapplied for institutional Medicaid coverage. That application was approved, and the petitioner has institutional Medicaid coverage back to July 1, 2015.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning MA is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d); Wis. Stat. § 49.45(5); Wis. Admin. Code § DHS 104.01(5)(a)3; Wis. Admin. Code § HA 3.05(3). A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

The petitioner had 45 days from the July 31, 2015 notice to request a fair hearing. 45 days from July 31, 2015 is September 15, 2015. The Division of Hearings and Appeals did not receive the petitioner's Request for Fair hearing until December 14, 2015. This is well beyond the petitioner's 45 day time limit to file an appeal. Thus, I am without jurisdiction to decide the merits of this case.

At the hearing the petitioner's representative testified that her sister was taking care of this application. The sister had her own health issues, and ended up in the hospital herself. This sister never followed up, and the representative unfortunately became involved too late to appeal. Since this representative has been involved she has submitted a new application, obtained the required verification, and the petitioner has been approved to institutional Medicaid effective July 1, 2015. Although I find the representative's testimony credible, the statute only allows a 45 day window, and I am without jurisdiction to decide this case on the merits.

CONCLUSIONS OF LAW

The petitioner's appeal is timely, and I am without jurisdiction.

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 20th day of January, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 20, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability