



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/171375

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on March 10, 2016, at Racine, 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:



Respondent:

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

By: [Redacted]
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) was a resident of Kenosha County. The petitioner has passed away. Prior to passing away, he was in a nursing home.
2. The petitioner applied for institutional Medicaid (MA) coverage with a back date requested effective July 1, 2015.

3. On November 23, 2015 the agency sent the petitioner a notice stating that he was eligible and would receive institutional MA coverage effective July 1, 2015. The notice stating that the petitioner had until January 8, 2015 to file for a Fair Hearing.
4. On January 14, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
5. The petitioner had two previous applications for institutional MA coverage that were denied for failing to provide verification. The first denial notice was mailed to the petitioner on or about April 1, 2015. The second denial notice was mailed to the petitioner on or about August 12, 2015.

DISCUSSION

When the agency takes a negative action, the person seeking benefits has 45 days to challenge that decision. Wis. Adm. 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. I am not aware of a provision that would allow a person to contest a positive action by the agency.

In this case the petitioner's most recent institutional MA application was approved exactly as the petitioner requested. There were two prior applications that were denied on or about April 1, 2015 and August 12, 2015. The Division of Hearings and Appeals received the petitioner's Request for Fair Hearing on January 14, 2016. This is well beyond the 45 day appeal limit, and thus I must dismiss this appeal.

The petitioner's wife stated that the nursing home was helping her obtain the institutional MA coverage. Whatever the nursing home asked her to provide, she did. When she received the denial notices, she provided the notices to the nursing home. A nursing home staff member told her not to worry, that her husband, who was a veteran, and at the [REDACTED] veteran's home, would not be responsible for any payment. Unfortunately, the nursing home worker never provided the documentation. Two applications were institutional MA were denied, but never appealed. The petitioner passed away, and now the nursing home is seeking payment for the time in which the petitioner not receiving institutional MA coverage. At this point, it appears that those applications were correctly denied. However, even if the applications were incorrectly denied, the petitioner is beyond the time limit to appeal those denials.

CONCLUSIONS OF LAW

The petitioner's appeal is untimely.

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 14th 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 14, 2016.

Racine County Department of Human Services
Division of Health Care Access and Accountability