



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/171509

PRELIMINARY RECITALS

Pursuant to a petition filed January 20, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on March 10, 2016, at Racine, Wisconsin.

The issue for determination is whether the petitioner timely appealed the reduction in her Supportive Home Care hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

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

By: [REDACTED]
Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Racine County.

2. On November 18, 2015 the IRIS program sent the petitioner a notice stating that her Supportive Home Care was being reduced effective January 1, 2016. The letter stated that the petitioner had 45 days from the date of the letter to request a fair hearing.
3. On January 20, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program was developed pursuant to a Medical Assistance waiver [Waiver WI.0484.R01.06] obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. This Section 1915(c) waiver document is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. IRIS is a fee-for-service, self-directed personal care program.

An appeal of a negative action by a county agency concerning MA or FC or IRIS must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. In this case the notice of negative action was November 18, 2015. The petitioner did not file her appeal until January 20, 2016. This is beyond the 45 day deadline, and I am without jurisdiction to decide this case on the merits.

I note that IRIS used their supportive home care (SHC) tool in calculating the petitioner's SHC hours. That tool indicated that the petitioner was eligible for only 13.75 hours per month. They spoke to the petitioner, and allowed additional time in the area of meal preparation, for a total of 21.5 hours per month of SHC. Given the documents, the petitioner's testimony, and her daughter's testimony, this amount of SHC time appears very reasonable. MA is only meant to provide basic and necessary care. However, because I do not have jurisdiction, I cannot make a decision on the merits of this case.

CONCLUSIONS OF LAW

The petitioner's appeal of the reduction in her Supportive Home Care hours 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 18th day of April, 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 April 18, 2016.

Bureau of Long-Term Support