



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

In the Matter of

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

DECISION

MGE/173554

PRELIMINARY RECITALS

Pursuant to a petition filed April 06, 2016, 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 (MA), a hearing was held on May 17, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely and, if so, whether the agency properly denied the Petitioner’s renewal application for Institutional MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner has been residing in a skilled nursing facility since 2010.

2. On December 19, 2015, a renewal application for Institutional MA was submitted on behalf of the petitioner with the agency. A three month backdate was requested. It was reported that Petitioner's assets included a checking account, burial insurance and a life insurance policy. The application was processed by the agency on December 21, 2015. The case was pended for verification of the burial insurance and life insurance.
3. On December 22, 2015, the agency issued a Notice of Proof Needed to the Petitioner's authorized representative requesting verification of the resale value of the burial insurance and cash surrender value of the life insurance policy. The due date for the information was January 20, 2015.
4. On January 7, 2016, the agency received a letter from the life insurance company indicating that monthly premiums of \$29.15 would be deducted for the policy. The letter contained no information regarding the cash surrender value of the policy.
5. On January 15, 2016, the agency issued a Notice of Proof Needed to the Petitioner's representative requesting verification of the cash surrender value of the life insurance policy. The due date for the information was January 20, 2016.
6. On January 25, 2016, the agency issued a Notice of Decision to the Petitioner's authorized representative informing her that the agency denied the Petitioner's Institutional MA application and denied the request to back-date due to failure to complete the renewal and failure to submit requested verifications. The notice also informed him of the right to appeal the agency determination by filing a request for a hearing by March 11, 2016 with the Division of Hearings and Appeals.
7. On April 6, 2016, an appeal was filed with the Division of Hearings and Appeals on behalf of the Petitioner.
8. On May 17, 2016, the agency received verification of the cash surrender value of the Petitioner's life insurance. The cash surrender value was reported to be \$2,887.49.

DISCUSSION

A hearing officer can rule on the merits of a case only if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA 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. The petitioner's appeal was filed 26 days after the deadline for filing an appeal. The Petitioner's authorized representative testified that she was unaware of a right to appeal or an appeal deadline. The right to an appeal and the 45-day filing deadline of March 11, 2016 was stated on the Notice of Decision issued to the Petitioner on January 25, 2016. Thus, her appeal was untimely, and no jurisdiction exists for considering the merits of the MA case.

As dicta, I note that, even if the appeal had been timely filed, the MA rules are clear that it is the applicant's responsibility to provide requested verifications to allow the agency to make a proper determination of eligibility. The rules require that the application be denied if information is not submitted in a timely manner. In this case, the agency gave the Petitioner additional time to provide the verifications. Petitioner's representative testified she did not understand what was being requested but did not request assistance from the agency until well after the due dates for the information and after the case was closed.

CONCLUSIONS OF LAW

The Petitioner's appeal was untimely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal 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.

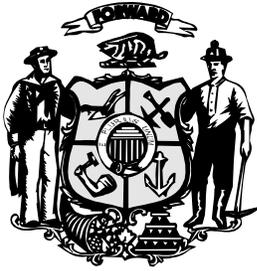
APPEAL TO COURT

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 29th day of June, 2016

\sDebra Bursinger
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 June 29, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability