



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

In the Matter of

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

DECISION

MGE/173707

PRELIMINARY RECITALS

Pursuant to a petition filed April 18, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on May 10, 2016, at Appleton, 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]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) was a resident of Outagamie County. She died on December 8, 2015.

2. The petitioner applied for institutional MA coverage. She requested coverage effective October 1, 2015. On November 27, 2015 the agency mailed the petitioner a notice stating that they needed proof of a burial insurance policy, a checking account, and a savings account.
3. On December 21, 2015 the agency received some of the requested verification, but still could not determine where the petitioner's \$25,000 marital settlement agreement received September 21, 2015 went.
4. On December 22, 2015 the agency sent the petitioner a notice stating that they had denied her application for institutional MA because she had failed to timely provide the requested verification. The notice went on to state that she had a right to a Fair Hearing, and that she must request a hearing from the Division of Hearings and Appeals no later than February 8, 2016.
5. Both notices were returned to the agency with a forwarding address to the petitioner's nursing home. The verification notice was resent to the petitioner's nursing home. The denial notice was also resent to the petitioner's nursing home address on December 30, 2015. These resent letters were never returned to the agency.
6. On April 18, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

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).

In this case the petitioner's appeal is untimely. On December 22, 2015 the agency sent the petitioner a notice stating that her institutional MA application was denied. The notice clearly stated that her appeal was due by February 8, 2016. This was 45 days from the agency's notice. The Division of Hearings and Appeals did not receive the petitioner's Request for Fair Hearing until April 18, 2016. This is well beyond the 45 day time limit, and I am without jurisdiction to decide the merits of this appeal.

I have considered that the December 22, 2015 denial notice was returned to the agency with a forwarding address of the petitioner's nursing home. The agency resent that letter on December 30, 2016. This is only an eight day delay. The petitioner's Request for Fair Hearing was received 2 months and 10 days beyond the 45 day limit. Thus, even with this delay the petitioner's Request is untimely.

The petitioner's son argues that he provided the requested verification on December 21, 2015, one day before the due date. The agency agrees that some verification was received on December 21, 2015, but states that this verification was incomplete. The petitioner received a \$25,000 divorce settlement on September 21, 2015. She was applying for MA, which has a \$2,000 asset limit, less than two months later. The agency needed to verify that the petitioner spent this money, and that there was not a divestment. Although the petitioner's son believes that he provided sufficient verification, I agree with the agency that more information was needed to make that determination. If I had jurisdiction I would find against the petitioner. This is a moot point as the petitioner's appeal is not timely, and I do not have jurisdiction.

CONCLUSIONS OF LAW

The petitioner's appeal is not timely.

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 9th day of June, 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 June 9, 2016.

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