



FH



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

In the Matter of



DECISION

MGE- 173859

PRELIMINARY RECITALS

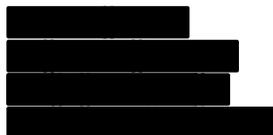
On April 25, 2016, the above petitioner filed a hearing request under Wis. Stats. § 49.45(5), to challenge a decision by the Waukesha County Health and Human Services regarding Medical Assistance. The hearing was held on May 26, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly denied the Petitioner's application for Medicaid (MA).

There appeared at that hearing the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent's Representative:



Respondent:

Department of Health Services



Waukesha County Health and Human
Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On November 12, 2015, an application for Institutional MA was filed on behalf of the Petitioner.
3. On December 2, 2015, the agency issued a request for verification of the cash surrender value of the Petitioner's life insurance policy, information regarding Petitioner's funeral policy, and bank statements. The due date for the requested verification and information was December 14, 2015.
4. On December 14, 2015, the Petitioner's representatives submitted some of the requested information but not all of the requested information.
5. On December 15, 2015, the agency issued a Notice of Decision to the Petitioner at his address on [REDACTED] Hartland informing him that his application for Institutional MA had been denied due to failure to provide requested verifications. The notice also informed him of the right to appeal the agency's determination by filing a request for a hearing no later than February 1, 2016.
6. On January 11, 2016, the agency spoke with the Petitioner's wife about the information that was not yet submitted.
7. On January 26, 2016, the Petitioner's representative submitted bank account information to the agency.
8. On January 29, 2016 and February 1, 2016, the Petitioner's representative submitted information regarding the Petitioner's life insurance to the agency.
9. On March 28, 2016, a second application for Institutional MA was filed on behalf of the Petitioner. There was a request for a three month backdate.
10. On April 25, 2016, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.
11. On April 26, 2016, the agency issued a Notice of Decision to the Petitioner at his address on [REDACTED] Hartland informing him that his application for Institutional MA was approved effective December 1, 2015.

DISCUSSION

A hearing examiner can rule on the merits of a case only if there is jurisdiction to do so. There is no jurisdiction if an appeal is not timely filed. An appeal of a negative action concerning MA just be filed within 45 days of the effective date of the agency action. Wis. Stat. § 49.45(5). A negative action can include the termination or denial of benefits.

In this case, the agency issued a notice to the Petitioner on December 15, 2015 informing the Petitioner that his MA application was denied due to failure to submit verifications by the due date. The notice also informed the Petitioner of the right to appeal this determination by filing a request for a hearing no later than February 1, 2016.

The Petitioner's representative asserts that the Petitioner and his wife do not recall receiving the notice though it was properly mailed to the Petitioner at his mailing address. The Petitioner's representative further asserts that the agency worker did not adequately inform the Petitioner or his family that the case was closed. She notes that the family was continuing to work on gathering information to comply with the request for verifications. The Petitioner further asserts that the agency worker engaged in improper over-verification.

While I agree with the Petitioner that the agency worker should have been more helpful to the family in processing this application and should have either pended the case to allow additional time or informed them as he continued to work with them of the need to file a new application after the case closed, I must conclude that I lack jurisdiction because the appeal was not timely filed. I find no reason for the agency worker to have failed to provide more assistance to this family during a very difficult time. If I could rule on the merits, I would more closely examine the issue of over-verification or failure to provide assistance. However, DHA does not possess equitable authority as a circuit court would. Therefore, because the appeal was untimely, I do not have jurisdiction.

With regard to the March 28, 2016 application, the agency approved the application with a 3 month backdate to December 1, 2015. The MA rules allow for backdating eligibility up to three months. Medicaid Eligibility Handbook, § 2.8.2. The agency approved a three month backdate so there is no issue for determination with regard to the March 28, 2016 application.

CONCLUSIONS OF LAW

The Petitioner's appeal was untimely with regard to the denial of the Petitioner's November 12, 2015 MA application.

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, **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 6th day of July, 2016

\s _____
Debra 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 July 6, 2016.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability

