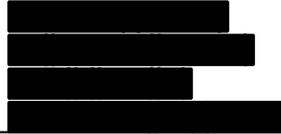




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/173926

PRELIMINARY RECITALS

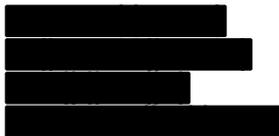
Pursuant to a petition filed April 27, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on May 31, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of a denial of a prior authorization request 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], RN, BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Milwaukee County.

2. On January 12, 2016 the petitioner's provider submitted a prior authorization request for Personal Care Worker hours. This request was based on a Personal Care Screening Tool (PCST), which estimated that the petitioner needed 17 hours per week of PCW time.
3. On March 11, 2016 the Department sent the petitioner a notice stating that they had denied the petitioner's prior authorization request for PCW hours. This notice was sent to the petitioner's current address. The notice specifically stated that the petitioner's appeal deadline was April 25, 2016. It also informed the petitioner that the Division of Hearings and Appeals had to *receive* his appeal by the April 25, 2016 due date. The notice included instructions for submitting an appeal. The petitioner received this notice.
4. On April 27, 2016 the Division of Hearings and Appeals received the petitioner's faxed appeal request.
5. The petitioner is a 65 year old with diagnoses of "pain in unspecified limb" and "schizoaffective disorder." He has received PCW assistance in the past through Medicaid.

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).

Here the petitioner's appeal had to be received by the Division of Hearings and Appeals by April 25, 2016. The Division of Hearings and Appeals did not receive the petitioner's appeal until April 27, 2016. The petitioner's appeal is therefore untimely, and I do not have jurisdiction to address this case on the merits.

The petitioner argued that he did not receive the denial notice from the Department. I do not find this argument credible. The denial notice was sent to the petitioner's correct and current address. If the petitioner still disagrees with this denial, the petitioner should contact his provider to complete a new PCST and submit a prior authorization request for PCW hours. If the Department denies the new request, then the petitioner can timely appeal the new denial. It would be prudent for the provider to review the Department's letter and reason for denial. The provider could address the reasons for denial in the new request, which may alleviate the need for a new appeal.

CONCLUSIONS OF LAW

The petitioner's appeal of a denial of a prior authorization request 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 1st 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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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on June 1, 2016.

Division of Health Care Access and Accountability