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

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In the Matter of

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

**DECISION**  
Case #: MPA - 174190

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on May 5, 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 regarding Medical Assistance, a hearing was held on August 9, 2016, by telephone.

The issue for determination is whether Petitioner's appeal is untimely.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

;

Respondent:

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

By: OIG by Letter

Division of Health Care Access and Accountability  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. On February 19, 2016, [REDACTED], on behalf of the Petitioner, requested prior authorization to provide 154 units/38.5 hours per week of personal care services for 53 weeks at a cost of \$39,789.75. (Exhibit 3, pg. 5)
3. On March 15, 2016, the Department of Health Services sent notices to the Petitioner, in care of her mother, and to [REDACTED], advising them that it approved 123 units/30.75 hours per week of personal care services. (Exhibit 3, pgs. 23-28)
4. The Petitioner's mother, on the Petitioner's behalf, filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 5, 2016. (Exhibit 1)

### DISCUSSION

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. 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, the reduction of benefits, or the termination of an ongoing case.

Here, the date of action was March 16, 2015, the date the Department of Health Services sent the Petitioner notice that the request for services was modified. In order to meet the 45-day deadline, Petitioner's appeal needed to be filed by Friday, April 29, 2016. Petitioner's appeal is considered filed on the date of the post-mark on her appeal, which is May 5, 2016. *See* Wis. Admin. Code §HA 3.05(3)(c) As such, Petitioner's appeal was untimely, and no jurisdiction exists for considering the merits of the case.

Petitioner's mother testified that she could not file the appeal on time, because a radiator burst in her residence, so she was unable to stay in her residence and her mail was held at the post office. Petitioner's mother testified that she has been living with the Petitioner and only checks her mail intermittently, so she did not get the notice as soon as she otherwise would have.

This explanation for Petitioner's late appeal is a bit curious, given that the letter Petitioner's mother mailed off on May 5, 2016, to request a hearing, had the date April 20, 2016 typed in at the top. Curious explanation or not, the fact remains that there are no good cause exceptions to timely filing an appeal.

### CONCLUSIONS OF LAW

Petitioner's appeal is untimely and there is no jurisdiction to review the merits of her appeal.

**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, **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 August, 2016

\s \_\_\_\_\_  
Mayumi M. Ishii  
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 August 18, 2016.

Division of Health Care Access and Accountability