



FH  
[REDACTED]

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

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In the Matter of

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

**DECISION**  
Case #: CWA - 174766

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 4, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services regarding Medical Assistance (MA), a hearing was held on July 7, 2016, by telephone.

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

NOTE: The record was held open until August 10, 2016, to give the Petitioner an opportunity to submit additional documentation. None was submitted by the designated deadline.

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: [REDACTED], Economic Support Specialist  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On December 14, 2015, the agency sent the Petitioner a notice, reminding him that he needed to complete a renewal by January 31, 2016, to continue receiving benefits. (Exhibit 9)
3. On January 19, 2016, the agency sent the Petitioner a notice, indicating that his benefits would be ending, effective February 1, 2016. (Exhibit 11)
4. On March 11, 2016, the Department of Health Services, Division of Long Term Care sent the Petitioner a letter indicating that he would be disenrolled from the IRIS program, effective March 16, 2016, because he was deemed ineligible for Medicaid. (Exhibit 4)
5. On March 12, 2016, the Petitioner completed an ACCESS renewal, which the agency treated as a new application. (Exhibit 12)
6. On March 16, 2016, the agency sent the Petitioner a Notice of Proof Needed, requesting verification of his bank accounts and various shelter expenses, by March 25, 2016. (Exhibit 6)
7. On March 29, 2016, the agency sent the Petitioner a notice indicating that his application was denied because he did not provide the required verifications. (Exhibit 7)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 4, 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 medical assistance 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 agency terminated the Petitioner's Medicaid coverage, effective February 1, 2016. In order to meet the 45-day deadline, Petitioner's appeal needed to be filed by March 18, 2016, as indicated in the notice mailed to him on January 19, 2016. The Petitioner did not file his appeal until June 2016, well past the 45 day appeal deadline. As such, no jurisdiction exists to consider the merits of Petitioner's appeal of the February 1, 2016, case closure.

The Petitioner reapplied for benefits in March 2016, but on March 29, 2016, the agency sent the Petitioner a notice that his application was denied. In order to meet the 45-day appeal deadline for that action, the Petitioner needed to file his appeal by May 16, 2016. Petitioner's appeal was not filed until June 4, 2016. As such, no jurisdiction exists to consider the merits of Petitioner's appeal of that action.

The Petitioner also wished to appeal his March 16, 2016, disenrollment from the IRIS program, but his appeal of that issue is also outside the 45 day time limit, and even if I found his appeal timely, I would uphold his disenrollment from the IRIS program, because he lost his Medicaid eligibility effective February 1, 2016. If he is not eligible for Medicaid, then he is not eligible for the IRIS program.

The Petitioner argued that the rules should not apply to him, and that an exception should be made, because he was in and out of the hospital and because he received confusing information from the agency. Petitioner's argument is equitable in nature, meaning it is based upon what he believes is fair. However, Administrative Law Judges do not have equitable authority, but must instead apply the law as it is written.

**CONCLUSIONS OF LAW**

Petitioner’s appeal is untimely. There is no jurisdiction to review the merits of his 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 15th 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 15, 2016.

Waukesha County Health and Human Services  
Bureau of Long-Term Support