



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

In the Matter of

[Redacted]
[Redacted]
[Redacted]
[Redacted]

DECISION
Case #: MPA - 175494

PRELIMINARY RECITALS

Pursuant to a petition filed on July 11, 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 (MA), a hearing was held on September 8, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely and, if so, whether the agency properly denied the Petitioner’s PA request for orthodontia.

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, WI 53703

By: [Redacted], DDS
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.

2. On or about December 15, 2015, the Petitioner's provider, [REDACTED], submitted a Prior Authorization request for orthodontia for the Petitioner.
3. On January 19, 2016, the agency issued a notice to the Petitioner informing him that the PA requested was denied. The notice further informed the Petitioner of the right to appeal the determination by requesting a hearing with the Division of Hearings and Appeals by March 4, 2016.
4. On July 11, 2016, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

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 concerning MA benefits 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 or the reduction or termination of an ongoing case. The petitioner's appeal was filed 164 days after the date of the action. The 45-day filing deadline (March 4) was stated in the January 19, 2016 notice.

The Petitioner's mother testified at the hearing that she had not noticed the appeal deadline. With regard to the denial of the PA request, the Petitioner's mother testified that the Petitioner complains of pain in his mouth and reported that he is self-conscious of the way his teeth look due to teasing. She stated he has no difficulty with chewing or biting. The Petitioner's Salzman score was reported to be 23.

I conclude that the Petitioner's appeal was untimely, and no jurisdiction exists for DHA to consider the merits of the case. I note that there is nothing in this decision that prevents the Petitioner and his provider from re-submitting a PA request with updated information regarding his need for orthodontia. Any extenuating circumstances the Petitioner wishes to have considered such as pain, difficulty with chewing or biting or psychological aspects in dealing with issues related to his teeth must be noted in the provider's documentation submitted with the PA.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

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 18th day of October, 2016

\s _____
Debra Bursinger
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 October 18, 2016.

Division of Health Care Access and Accountability