



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/142770

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on September 17, 2012, at West Bend, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Linda Hunt

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. This appeal was filed on behalf of Petitioner on July 30, 2012. The appeal form indicates that Petitioner was challenging a denial of Medicaid benefits. Though the appeal form notes that the denial was effective June 1, 2012 there is a question mark next to that date on the appeal form and at the hearing it became apparent that the denial was much earlier in the year. By the time of the hearing Petitioner's case was opened and ongoing for institutional Medicaid.

3. A Notice of Decision dated February 29, 2012 was sent to the above address. That notice informed Petitioner's representative that Petitioner's application for long-term nursing home care was denied as of January 1, 2012 because of assets in excess of program limits and that a Medicare Savings Program benefit had been denied because of income over the program limits. That notice also contains appeal instructions and notes that the appeal deadline was April 16, 2012.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. §49.45(5)(a), *Wis. Stats.* Here it is apparent that the hearing was requested after the April 16, 2012 appeal filing deadline. Thus the appeal is untimely and the Division of Hearings and Appeals without authority to act.

As a side note, even if timely I could not find for Petitioner. The Medicaid asset limit is \$2000. *Medicaid Eligibility Handbook (MEH)*, §39.4.1. Petitioner's assets were in excess of that limit early in 2012. Further, the income limit for the Medicaid savings programs is 135% of the federal poverty level which is \$1256.63 for one person. *See MEH*, §§ 32.1- 4 (*SLMB+*; *the other Medicaid Savings Programs have income of less than that*) and §39.5. Petitioner's income is above that amount.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals is without authority to make a determination on the merits of this matter as the request for the hearing is untimely.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of October, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Division of Health Care Access and Accountability, DHSDHADHCAA@Wisconsin.gov -
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State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 16, 2012.

Washington County Department of Social Services
Division of Health Care Access and Accountability