



FH

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

In the Matter of:



**REHEARING
DECISION**

MPA/142936

PRELIMINARY RECITALS

Pursuant to a petition filed August 8, 2012, under Wis. Stat. § 49.45(5) (2009-10) and Wis. Adm. Code § HA 3.03 (September 2001), to review a decision by the Division of Health Care Access and Accountability ["DCHAA"] in regard to a Prior Authorization ["PA"] request for Medical Assistance ["MA"] payment for orthodontic treatment and periodic visits for petitioner, a Hearing was scheduled for August 28, 2012. Petitioner failed to appear for that August 28th Hearing. Accordingly, a *Decision* dated August 30, 2012 was issued dismissing petitioner's petition as abandoned.

On October 1, 2012 the Division of Hearings and Appeals ["DHA"] received, via U.S. Mail postmarked September 27, 2012, an undated letter from petitioner. That letter was a request for a rehearing. By a *Rehearing Request Order* dated October 3, 2012 DHA granted petitioner's request for a rehearing. A rehearing was held via telephone on October 23, 2012.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction in this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Wisconsin Department of Health Services
Room 650
1 West Wilson Street
P.O. Box 7850
Madison, Wisconsin 53707-7850

BY: Robert Dwyer, DDS, Dental Consultant [Dr. Dwyer did not appear at the October 23, 2012 Rehearing but submitted a letter dated August 20, 2012

with attachments.]

Division of Health Care Access and Accountability
 Room 250
 1 West Wilson Street
 P.O. Box 309
 Madison, Wisconsin 53701-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (age 17 years) is a resident of Wisconsin.
2. Petitioner's provider, Dental Associates Fox Valley located in Wauwatosa, Wisconsin, requested PA (P.A. # [REDACTED]; dated April 27, **2011**) for Medical Assistance ["MA"] coverage for orthodontic treatment and periodic visits for petitioner at a total cost of \$5,850.00.
3. DHCAA denied the requested orthodontic treatment and periodic visits (PARF # [REDACTED]; DHCAA sent a letter to petitioner dated May 3, **2011** and entitled *BadgerCare Plus Notice of Appeal Rights* notifying petitioner of the denial; that May 3rd letter explained petitioner's appeal rights and clearly set-out the appeal deadline and the address of DHA to which an appeal must be mailed.
4. Petitioner's request for a Hearing was dated July 30, **2012** and received by DHA via fax on August 8, **2012**.

DISCUSSION

DHA has authority to hold a Hearing and make a decision only if the law provides for such authority. In legal language this authority is known as *jurisdiction*.

In order for DHA to have jurisdiction, an appeal of an action concerning MA, such as a denial of PA, must be made within 45 days of the effective date. Wis. Stat. § 49.45(5)(a) (2009-10); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (September 2001); see also, 42 C.F.R. § 431.221(d) (2011). A Hearing request that is not filed within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (September 2001).

A Hearing request is considered filed on the date of actual receipt by DHA or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c) (September 2001). In this case the Hearing request was received by DHA via fax on August 8, 2012. Thus, it is considered filed on August 8, 2012.

In this matter the effective date of the action was May 3, **2011** -- the date of the letter denying petitioner's request for PA. Forty-five days from May 3, 2011 is June 17, 2011 . Petitioner's request for a Hearing was not filed until August 8, **2012**. Thus, petitioner's request for a Hearing was not made within the 45 -day time period and DHA does not have jurisdiction.

CONCLUSIONS OF LAW

For the reasons stated above, DHA does not have jurisdiction in this matter.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

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 Madison,
Wisconsin, this 30th day of October, 2012

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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5005 University Avenue
Madison, WI 53705-5400

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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 30, 2012.

Division of Health Care Access And Accountability