



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

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In the Matter of:

[REDACTED]

DECISION

MPA/144320

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 4, 2012, under Wis. Stat. § 49.45(5) (2009-10) and Wis. Adm. Code § HA 3.03 (September 2001), to review a decision by the Office of the Inspector General ["OIG"] in regard to a Prior Authorization ["PA"] request for Medical Assistance ["MA"] payment for a Speech Generating Device ["SGD"] for petitioner, a Hearing was held via telephone on October 24, 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:

Represented by:

[REDACTED] (not present at October 24,  
2012 Hearing)  
c/o [REDACTED]  
[REDACTED]

[REDACTED], petitioner's mother  
[REDACTED]

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

BY: Patricia Willis, MST, CCC -SLP, OIG Therapies Consultant [Ms. Willis did not appear at the October 24, 2012 Hearing but submitted a letter dated October 15, 2012 with attachments. (Exhibit A)]

Office of the Inspector General  
Room 250  
1 West Wilson Street

P.O. Box 309  
Madison, Wisconsin 53701-0309

OTHER PERSONS PRESENT:

Jeff Bindl, Director of Pupil Services, School District of Reedsburg  
Judy Brey, petitioner’s current school district Speech -Language Pathologist [“SLT”]  
Marlie Millar, petitioner’s past school district SLT  
Laurie Ryan, petitioner’s school district Occupational Therapist [“OT”]  
Katherine Weix, petitioner’s special education teacher

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (age 8 years) is a resident of Wisconsin.
2. On May 24, 2012 petitioner's provider, Assistive Technologies, Inc. located in Dedham, Massachusetts, requested PA (P.A. # [REDACTED] dated May 23, 2012) for Medical Assistance ["MA"] coverage of a Tobii C8 SGD and a carrying case for petitioner at a total cost of \$7,307.00. Exhibit A.
3. On June 22, 2012 OIG denied the requested Tobii C8 SGD and a carrying case (P.A. # [REDACTED]); OIG sent a letter to petitioner dated June 22, 2012 and entitled *BadgerCare Plus Notice of Appeal Rights* notifying petitioner of the denial; petitioner received that June 22<sup>nd</sup> letter; that June 22<sup>nd</sup> 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. Exhibit A.
4. Petitioner’s requested a Hearing by a *Request For Fair Hearing* form dated September 28, 2012 and received by DHA on October 5, 2012 via U.S. Mail postmarked October 4, 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 postmarked October 4, 2012. Thus, it is considered filed on October 4, 2012.

In this matter the effective date of the action was June 22, 2012 -- the date of the letter denying petitioner's request for PA. Forty-five days from June 22, 2012 is August 6, 2012. Petitioner's request for a Hearing was not filed until October 4, 2012. Thus, petitioner's request for a Hearing was not made within the 45 - day time period and DHA does not have jurisdiction.

Petitioner testified that she had 2 surgeries during the summer and was not at home. She testified that the June 22, 2012 *BadgerCare Plus Notice of Appeal Rights* sat on her table and that she did not get to it until after her surgeries. Petitioner's circumstances are sympathetic; unfortunately, they do not create jurisdiction where none otherwise exists.

### **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.

### **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 Madison,  
Wisconsin, this 26th day of October, 2012

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Sean P. Maloney  
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 October 26, 2012.

Division of Health Care Access And Accountability