



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MPA/144822

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 2012, 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 in regard to Medical Assistance, a hearing was held on November 29, 2012, at Madison, Wisconsin.

The issue for determination is

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: Lynn Radmer (in writing)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner's provider filed a request for prior authorization (PA # [REDACTED]) for Glucerna nutritional supplement on or around September 5, 2012.

3. The Department sent a denial to petitioner dated September 6, 2012. The letter to petitioner included appeal rights and indicated a deadline for filing an appeal of October 21, 2012.
4. Petitioner filed her request for hearing on October 29, 2012.

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 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 or the reduction or termination of an ongoing case. The petitioner's appeal was filed more than 45 days after the date of the September 6, 2012 notification of the action to deny the authorization request. Petitioner did not dispute that she received the notice shortly after the date it was mailed. Petitioner stated that she did not file the appeal because she was in the process of talking with physicians and others about what she should do. Ultimately, she waited too long. The request for hearing was untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The request for hearing was untimely and DHA does not have jurisdiction to consider the merits of the denial.

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 served and 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 November, 2012

\sJohn P. Tedesco
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 November 30, 2012.

Division of Health Care Access And Accountability