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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MGE/142784

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 01, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on January 29, 2013, at Waukesha, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely and whether Waukesha County Health and Human Services (the agency) correctly denied Petitioner's application for medical assistance.

NOTE: The record was held open until February 5, 2012, to give the parties an opportunity to supplement the record. Attorney Stansberry submitted a letter with supporting documents on February 5, 2013. The packet has been marked as Exhibit 6 and entered into the record. The agency also submitted a packet of documents on February 5, 2013. It has been marked as Exhibit 7.

On February 7, 2012, ALJ Ishii contacted the parties to inquire whether Petitioner had been moved from a hospital to a nursing home, because the information provided by Attorney Stansberry indicated Petitioner had been in the nursing home only 22 days before he passed away. Ms. Rutzinski indicated, via e-mail, that the agency had no information about Petitioner having been transferred from a hospital to a nursing home.

On February 11, 2013, ALJ Ishii contacted Attorney Stansberry via e-mail and telephone, asking for a response by 4:30 p.m. Attorney Stansberry submitted his response, which has been marked as Exhibit 8 and entered into the record. Consequently, a decision was issued based upon the existing record.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Charles J. Stansberry JR  
2835 S Moorland Rd  
New Berlin, WI 53151-3743

Respondent:

Department of Health Services  
1 West Wilson Street

Madison, Wisconsin 53703  
By: Lori Rutzinski  
Waukesha County Health and Human Services  
500 Riverview Avenue  
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:  
Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) was a resident of Waukesha County.
2. Petitioner participated in the Senior Care program, but was not a participant in the Community Waivers Program. (Exhibit 2; Exhibit 7)
3. Petitioner entered directly into a nursing home on February 2, 2012. He passed away on February 24, 2012. (See Exhibits 2, 6 and 8)
4. On March 7, 2012, Attorney Stansberry filed an ACCESS application for health care benefits, in particular, Institution Long Term Care (ILTC), on behalf of Petitioner, to cover costs in February 2012. (Exhibit 3)
5. On May 16, 2012, the agency sent Petitioner a notice, in care of his daughter, indicating that his application for ILTC benefits, effective February 2012, was denied because he was over the program’s asset limits. However, the agency did not send a copy of the notice to Attorney Stansberry, Petitioner’s authorized representative. (Exhibit 4; Exhibit 3; statement of Attorney Stansberry)
6. On May 25, 2012, Attorney Stansberry called the agency to inquire about Petitioner’s application and was informed that it was denied. (Statement of Attorney Stansberry)
7. Attorney Stansberry filed a request for fair hearing on August 1, 2012. (Exhibit 1)

**DISCUSSION**

*TIMELINESS*

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 a county agency concerning MA 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, the reduction of benefits or the termination of an ongoing case.

In the case at hand, the county agency sent Petitioner a notice denying his application for ILTC, in care of his daughter on May 16, 2012. However, Petitioner’s ACCESS application clearly stated that Attorney Stansberry was his authorized representative. As such, the notice should have been sent to Attorney Stansberry, but it was not. Attorney Stansberry only became aware of the denial because he called into the agency on May 25, 2012, to check Petitioner’s application for benefits.

Because the notice of adverse action was not properly served upon Attorney Stansberry, Petitioner’s authorized representative, counsel was not bound by the appeal period established by the May 16, 2012 notice. Petitioner’s appeal date of August 1, 2012, is not unreasonable under the circumstances. Accordingly, it is found that Petitioner’s appeal is timely filed.

*ELIGIBILITY*

Institutional Long Term Care (ILTC) is a subprogram of Wisconsin's Medicaid program, which provides medical assistance to blind, elderly or disabled individuals. ILTC provides medical coverage to individuals who are considered "institutionalized persons".

The Medicaid Eligibility Handbook defines an "institutionalized person" as someone who:

1. Participates in Community Waivers, or
2. Has resided in a medical institution for 30 or more consecutive days, or
3. Is likely to reside in a medical institution for 30 or more consecutive days, as attested to by the medical institution.

An exception to the 30-day period is that a resident of an IMD [Institution for Mental Disease] is considered an institutionalized person until s/he is discharged.

The 30-day period includes situations in which the person resides in more than one medical institution during 30 or more consecutive days.

*Medicaid Eligibility Handbook (MEH) §27.4.1*

Petitioner was not a participant in the Community Waivers program; he did not reside in the nursing home for 30 or more consecutive days. Given that Petitioner had passed away by the time his representative applied for benefits upon his behalf, he was not likely to reside in a medical institution for 30 or more consecutive days.

Consequently, he was not considered an institutionalized person for purposes of ILTC eligibility, and the agency correctly denied his application for ILTC benefits.

Counsel argues that neither the Wisconsin statutes, nor the administrative code have a 30-day requirement. However, the statutes to which counsel refers, Wis. Stats. §49.455(1)(d), defines the phrase, "institutionalized spouse" for purposes of determining resources and preventing spousal impoverishment. Counsel also referred to Wis. Admin. Code DHS §103.075, but again, it defines "institutionalized spouse" for purposes of determining resources and preventing spousal impoverishment. Neither the cited statute, nor the cited administrative code define "institutionalized person" for purposes of eligibility in the ILTC program.

**CONCLUSIONS OF LAW**

The agency correctly denied Petitioner's application for ILTC benefits for February 2012.

**THEREFORE, it is**

**ORDERED**

That the petition 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 Milwaukee,  
Wisconsin, this 12th day of February, 2013.

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\sMayumi M. Ishii  
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 February 12, 2013.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability  
[cjs@schoberlaw.com](mailto:cjs@schoberlaw.com)