



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FCP/143007

PRELIMINARY RECITALS

Pursuant to a petition filed August 13, 2012, under Wis. Admin. Code § DHS 10.55 and 42 C.F.R. § 438.408(f), to review a decision by the Care Wisconsin in regard to Partnership benefits (a Medical Assistance variant), a hearing was held on February 13, 2013, at Madison, Wisconsin. Hearings set for October 4 and December 5, 2012, were rescheduled at the petitioner's request. This hearing record was extended 21 days post-hearing for submission of written comments by the parties and decision issuance.

The issue for determination is whether petitioner's appeal was timely filed.

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: Pamela Anderson, RN

Care Wisconsin

(agent for the Department, for Partnership)

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County. He is enrolled in the Partnership program, a Medical Assistance variant for non-institutionalized persons.
2. The petitioner suffers from MS, depression, hypertension, and recurrent UTIs, and is confined to a power wheelchair. Prior to May 2012, the petitioner requested and received a several months' trial (August 2011 into April 2012) of sessions of Tui-na Chinese medical massage (aka "bodyworks") from the program. The program agreed to payment for the trial sessions on the condition that the petitioner's mental acuity be tested with a baseline measurement that began in August 2011, and that concluded on May 18, 2012. The testing showed a 13% functional improvement, rather than the 20% functional improvement that the program views as necessary for continued payment authorization of this service.
3. The petitioner requested payment authorization for future, ongoing Tui-na therapy. On May 25, 2012, Care Wisconsin sent a written notice of negative action to the petitioner, stating that the request for the therapy was denied. The notice advised that the petitioner had 45 days in which to request a fair hearing. See *Notice of Action*, p.4. The petitioner received this notice.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on August 13, 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 by a county agency concerning MA or the Partnership program must be filed within **45** days of the date of the action. 42 C.F.R. § 438.408(f)(1)(ii); Wisconsin Stat. § 49.45(5); Wis. Admin. Code § HA 3.05(3); *Income Maintenance Manual* § 3.3.1. A negative action can be the denial of an application, termination of an ongoing case, or reduction or denial of a specific service. The petitioner's appeal was filed **80** days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

This Decision does not preclude the petitioner from making a new request for future Tui-na therapy to the program and, if denied, again filing a fair hearing request (within the new 45 day period).

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

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
Madison, Wisconsin, this 6th day of March,
2013

\sNancy J. Gagnon
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 March 6, 2013.

Care Wisconsin
Office of Family Care Expansion