



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

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In the Matter of

[REDACTED]

DECISION

MPA/145163

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 08, 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 December 18, 2012, at West Bend, Wisconsin.

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] (did not appear)  
[REDACTED]  
[REDACTED]

Appearing for petitioner:

[REDACTED], petitioner's mother

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Theresa Walske, MS, CCC -SLP, Speech-Language Pathology Consultant  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Michael A. Greene  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Washington County.
2. Petitioner is a 7-year old boy diagnosed with autism.

3. On June 5, 2012, petitioner filed a request for pre-authorization of a formal speech and language evaluation. By letter dated July 9, 2012, the Division of Health Care Access and Accountability denied the request. The denial letter state that any appeal needed to be received at the Division of Hearings and Appeals by August 23, 2012.
4. Petitioner's appeal was received at the Division of Hearings and Appeals on November 8, 2012.

### DISCUSSION

A hearing officer can only hear cases on the merits if he or she has jurisdiction to do so. There is no jurisdiction if the hearing request is untimely. An appeal of a negative action by an agency concerning Medical Assistance benefits must be filed within 45 days of the effective date of the negative action, *Wis. Admin. Code* §HA 3.05(3). The negative action in this case was the denial of petitioner's request for prior authorization of the speech and language evaluation and the effective date of that negative action was July 9, 2012. The petitioner's request for hearing was filed with the Division of Hearings and Appeals on November 8, 2012, 132 days after the effective date of the negative action. Thus, the hearing request was untimely and I do not have jurisdiction to consider the merits of the case, *Wis. Admin. Code* §HA 3.05(4)(e).

### CONCLUSIONS OF LAW

This administrative law judge does not have jurisdiction over this appeal because it was not timely filed.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and hereby 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 6th day of February, 2013

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\sMichael A. Greene  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 6, 2013.

Division of Health Care Access And Accountability