



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

In the Matter of

[REDACTED]

DECISION

MPA/145813

PRELIMINARY RECITALS

Pursuant to a petition filed December 10, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General ["OIG"] in regard to Medical Assistance ["MA"], a Hearing was held on February 20, 2013 at the office of the Division of Hearings and Appeals ["DHA"] in Madison, Wisconsin. At petitioner's request Hearings scheduled for January 28, 2013 and January 11, 2013 were rescheduled.

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:

[REDACTED] [REDACTED] (not present at February 20, 2013 Hearing)

[REDACTED]
[REDACTED]

Represented by:

[REDACTED] [REDACTED] [REDACTED], petitioner's mother

[REDACTED]
[REDACTED]

Respondent:

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

By: Theresa Walske, MS, CCC -SLP, OIG
Office of the Inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. On September 28, 2012 petitioner's provider, Dynavox Systems of Pittsburgh, Pennsylvania, requested Prior Authorization ["PA"] (P.A. # [REDACTED]; dated September 28, 2012) for Medical Assistance ["MA"] coverage of a Speech Generating Device ["SGD"] (a *Tango* device) and accessories at a total cost of \$7,451.00. Exhibit #1.
3. OIG denied the requested SGD (P.A. # [REDACTED]); OIG sent a letter to petitioner dated October 9, 2012 and entitled *BadgerCare Plus Notice of Appeal Rights* notifying petitioner of the denial; petitioner received that October 9th letter; that October 9th letter explained petitioner's appeal rights and clearly set-out the appeal deadline, where an appeal request must be sent to, and the address of DHA to which an appeal must be mailed. Exhibits #1 & #3.
4. Petitioner's requested a Hearing by a letter from his mother dated November 5, 2012 and received by DHA on December 10, 2012 via fax. Exhibits #1 & #2.

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) (2011-12); 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); See also, Wis. Admin. Code §§ HA 3.02(2) & 3.05(2)(a) (September 2001); and, Wis. Admin. Code § DHS 101.03(8) (December 2008). In this case the Hearing request was received by DHA on December 10, 2012. Thus, it is considered filed on December 10, 2012.

In this matter the effective date of the action was October 9, 2012 -- the date of the letter denying petitioner's request for PA. Forty-five days from October 9, 2012 is November 23, 2012. Petitioner's request for a Hearing was not filed until December 10, 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 on November 12, 2012 she faxed a request for a Hearing to the fax number at the top of the October 9th denial letter. See, Exhibits #3 & #4. This appears to be the fax number for the Prior Authorization office.¹ However, a request for a Hearing must be made to DHA. See, Wis. Admin. Code §§ HA 3.02(2) & 3.05(2)(a) (September 2001); and, Wis. Admin. Code § DHS 101.03(8) (December 2008). The October 9th denial letter explained petitioner's appeal rights, set-out the appeal deadline,

clearly stated where the appeal request must be sent to, and provided the address of DHA to which an appeal must be mailed.

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

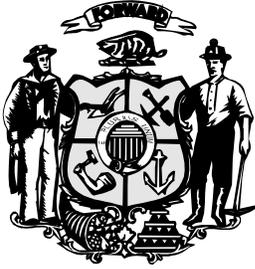
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 25th day of February, 2013

\sSean 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 February 25, 2013.

Division of Health Care Access And Accountability

ⁱ It appears to be the case that the Prior Authorization office never received the fax.