



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/145946

PRELIMINARY RECITALS

Pursuant to a petition filed December 17, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on February 5, 2013, at Elkhorn, Wisconsin.

The issue for determination are (1) whether petitioner's appeal was timely filed, and (2) whether the agency correctly denied an Elderly/Blind/Disabled MA application on July 17, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

By: [REDACTED] spouse

Respondent:

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

By: Sandy Cross, ES Spec.

Walworth County Department of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. An EBD MA application, signed by the petitioner's spouse on March 1, 2012, was filed at the county agency at some point thereafter. On May 31, 2012, the Department issued a written

verification request to the petitioner's correct mailing address, seeking verification of the value of multiple financial accounts (3 checking accounts, one savings account, one IRA) and two vehicles by June 22, 2012. On July 3, 2012, the Department issued another written verification request to the petitioner's correct mailing address, seeking verification of the value of the same 3 checking accounts and 3 savings accounts, due by July 12, 2012.

3. On *July 17, 2012*, the county agency sent a written notice of negative action to the petitioner. The notice advised that the EBD MA application had been denied. It also advised that any hearing request would be due no later than September 4, 2012 (45 days). See Exhibit 2, p.5. The notice was sent to the petitioner's correct mailing address of [REDACTED], and was not returned to the agency by the Postal Service as undelivered. The petitioner or her spouse received this notice.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on December 17, 2012.
5. The petitioner filed a new EBD Institutional MA application on September 6, 2012. On November 26, 2012, the Department issued notice to the petitioner advising that she had been found eligible for Institutional MA. Per the patient's request, the MA was backdated for the maximum three months (from June 1, 2012 forward) preceding application, as allowed by state and federal statutes.
6. The petitioner desires to contest the agency's July 17 denial of the first application. As will be explained below, this Administrative Law Judge has no jurisdiction to make a decision as to whether the July 17 denial was appropriate. The local agency voluntarily agreed to re-visit its July 17 decision, with a particular focus on whether the assets of the petitioner and her husband came under the spousal impoverishment MA limits in April and May, 2012. On February 6, 2012, this Administrative Law Judge received a letter from the local agency worker, indicating that the agency would not be conceding eligibility for April and May, 2012, due to the petitioner's failure to supply financial verification at that time.

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 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 153 days after the date of the July 17, 2012, action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

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 8th day of February, 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 February 8, 2013.

Walworth County Department of Human Services
Division of Health Care Access and Accountability