



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

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In the Matter of



DECISION

MPA/146483

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 08, 2013, 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 February 06, 2013, at Milwaukee, Wisconsin.

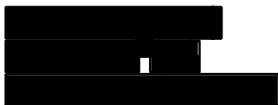
The issues for determination are:

- 1) Whether petitioner's appeal was timely filed with regard to the Division of Health Care Access and Accountability (DHCAA) September 2012 modification of a request for Personal Care Worker (PCW) services from 34 hours per week to 10.5 hours per week.
- 2) Whether the issue regarding a November 2012 request to amend the prior authorization request is ripe for adjudication.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services

1 West Wilson Street

Madison, Wisconsin 53703

By: Office of the Inspector General by letter

Division of Health Care Access and Accountability

1 West Wilson Street, Room 272

P.O. Box 309

Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. On August 19, 2012, United Home Care submitted a request for prior authorization, on behalf of Petitioner, seeking 7072 units of PCW service for 12 months (34 hours per week) at a cost of \$28,429.44. (Exhibit 4, pg. 16)
3. On September 19, 2012, DHCAA sent United Home Care a notice indicating that it was modifying the request and approving 42 units per week (10.5 hours) for 12 months, in addition to 96 units (24 hours) to be used as needed throughout the year. (Exhibit 4, pgs. 80-81)
4. On September 19, 2012, the DHCAA also sent Petitioner a notice advising her that it was modifying the request for PCW services. (Exhibit 4, pgs. 82-83)
5. On November 16, 2012, United Home Care submitted a prior authorization amendment request, asking that Petitioner's PCW hours be increased to 3 hours per day (21 hours per week) because she recently had by-pass surgery in her leg and had a stint removed. (Exhibit 4, pgs. 86-89)
6. On December 10, 2012, the DHCAA sent United Home Care a notice indicating that it needed further medical information to support the request for increased services. (Exhibit 4, pgs. 91-94) As of January 30, 2013, United Home Care did not provide the requested information to the DHCAA. (Exhibit 5, pg. 1)
7. It does not appear that a denial letter had been sent to Petitioner regarding the additional 3 hours of services that were requested as of January 30, 2013. (Exhibit 5, pg. 1)
8. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 8, 2013. (Exhibit 1)

**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 medical assistance must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1.

In this case, the negative action was the modification of Petitioner's prior authorization request, reducing the number of PCW hours from 34 hours per week to 10.5 hours per week. The date of action was September 19, 2012, so the appeal deadline was November 3, 2012. The petitioner's appeal was filed on January 8, 2013, 111 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case, with regard to the September 19, 2012 modification of the prior authorization request.

With regard to United Home Care's request to amend the authorization to increase PCW services to 21 hours per week, it is too early to review that matter, because the DHCAA had not yet sent Petitioner a letter denying the request. Once the DHCAA sends Petitioner a letter indicating that it is denying United Home Care's request to increase PCW services to 21 hours per week, the Petitioner can file a new request for fair hearing at that time. **If Petitioner receives a denial letter from the DHCAA, she should note the appeal deadline in the letter, located on the left had side of the first page, under her name and address.**

**CONCLUSIONS OF LAW**

- 1) There is no jurisdiction to review the DHCAA's September 19, 2012 modification of PCW services, because the appeal is untimely.

- 2) The issue regarding United Home Care's request to increase Petitioner's PCW hours from 10.5 hours to 21 hours per week is not ripe for adjudication, because there is no record of the request being denied.

**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 7th day of March, 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 March 7, 2013.

Division of Health Care Access And Accountability