



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/146725

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 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 21, 2013 and April 16, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal was timely and, if so, whether the agency properly denied the Petitioner's PA request.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Robert Derendinger

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On September 27, 2012, the agency received a Request for Prior Authorization submitted on the Petitioner's behalf from United Home Care requesting PCW services of 240 hours/week. The request was later clarified to be for 8.75 hours/week of PCW services. The PCST submitted with the request supported 5.75 hours/week of PCW services.
3. On November 28, 2012, the agency denied the Petitioner's PA request. The notice of denial informed the Petitioner of her right to appeal the agency's determination by filing an appeal within 45 days of the date of the decision. The notice further informed the Petitioner that this deadline for an appeal was January 12, 2013.
4. On January 16, 2013, the Petitioner filed an appeal.

DISCUSSION

A hearing officer can only rule on the merits of a case 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, including a PA request, must be filed within 45 days of the date of the action. Wis. Stats. § 49.45(5). The petitioner's appeal was filed 49 days after the date of the action. The appeal deadline was January 12, 2013. Because the deadline fell on a Saturday, the deadline for filing an appeal was extended to the following Monday, January 14, 2013. The Petitioner's appeal was still untimely and no jurisdiction exists for considering the merits of the case.

I note that at the time of the hearing, a new PA request had been submitted by the Petitioner's provider and a decision on that new request was still pending. The decision in the instant case does not impact the new PA request and does not preclude the Petitioner from filing an appeal related to the determination regarding that new PA request.

CONCLUSIONS OF LAW

The appeal was untimely.

THEREFORE, it is

ORDERED

That the petition 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 9th day of May, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on May 9, 2013.

Division of Health Care Access And Accountability