



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

REHEARING
DECISION

MPA/148099

PRELIMINARY RECITALS

Pursuant to a petition filed March 15, 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 ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was scheduled for May 7, 2013. Petitioner failed to appear for that May 7th Hearing. Accordingly, a *Decision* dated May 8, 2013 was issued dismissing petitioner's petition as abandoned.

On May 31, 2013 the Division of Hearings and Appeals ["DHA"] received, via U.S. Mail postmarked May 29, 2013, an undated letter from petitioner. That letter was a request for a rehearing. By a *Rehearing Request Order* dated June 4, 2013 petitioner's request for a rehearing was GRANTED. A rehearing was scheduled for July 11, 2013. At petitioner's request the July 11th rehearing was rescheduled. A rehearing was held via telephone on August 20, 2013.

The issue for determination is whether DHA has jurisdiction in this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Sharon Bailey RN, BSN, Nurse Consultant, DCHAA
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

OTHER PERSON PRESENT:
[REDACTED] Home Health Aide

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

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On October 26, 2012 petitioner's provider, ANS Home Health Services of West Allis, Wisconsin, requested Prior Authorization ["PA"] (PA # [REDACTED]; dated October 26, 2012) for Medical Assistance ["MA"] coverage of: (1) 42 hours (168 units) per week of Personal Care Worker ["PCW"] services; (2) 7 hours (28 units) per week of PCW services on an as needed ["Pro Re Nata" or "PRN"] basis; (3) 7 hours (28 units) per week of PCW travel time; and, (4) 3 skilled nursing visits on a PRN basis; all for 53 weeks with a requested start date was October 29, 2012 at a total cost of \$79,080.00. Attachment #3.
3. DCHAA modified P.A. # [REDACTED] by granting 31.5 hours (126 units) per week of PCW services [instead of the 42 hours (168 units) per week that was requested]; DCHAA sent a letter to petitioner dated January 23, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* notifying petitioner of the modification; that January 23rd 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. Attachment #1.
4. Petitioner requested a Hearing by an undated letter received by DHA on March 18, 2013 via U.S. Mail postmarked March 15, 2013. Attachment #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) (February 2013); 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) (February 2013).

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) (February 2013); See also, Wis. Admin. Code §§ HA 3.02(2) & 3.05(2)(a) (February 2013); and, Wis. Admin. Code § DHS 101.03(8) (December 2008). In this case the Hearing request was postmarked March 15, 2013. Thus, it is considered filed on March 15, 2013.

In this matter the effective date of the action was January 23, 2013 -- the date of the letter modifying petitioner's request for PA. Forty-five days from January 23, 2012 is March 9, 2013. Petitioner's request for a Hearing was not filed until March 15, 2013. Thus, petitioner's request for a Hearing was not made within the 45-day time period and DHA does not have jurisdiction.

Petition testified that he was in the hospital in January, March, April, and May and did not get the January 23, 2013 *BadgerCare Plus Notice of Appeal Rights* letter until he got out of the hospital. First, this does not explain why petitioner did not receive the letter in February since he was not in the hospital during that time. Second, even if correct, this does not create jurisdiction where none otherwise exists.

Lastly, it is noted that in his March 15, 2013 letter requesting a Hearing petitioner states: "I called on 3/14/13 to find out status of appeal, found out you didn't get the one my home health care sent a while back." DHA has no record of any appeal letter concerning this matter other than petitioner's March 15, 2013 letter requesting a Hearing. It is possible that petitioner is confusing his request for a Hearing with the *Prior Authorization Amendment Request* dated March 5, 2013 that was submitted by his home health care provider to DCHAA.

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.

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 27th day of August, 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 August 27, 2013.

Division of Health Care Access And Accountability