



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/148545

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 08, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on May 22, 2013, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Nancy Anderson

Polk County Department of Social Services  
100 Polk County Plaza, Suite 50  
Balsam Lake, WI 54810

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) was a resident of a nursing home in Polk County until she died on April 5, 2013.

2. The county agency notified the petitioner on December 12, 2012, that she must contribute \$1,956 a month to her medical costs, beginning January 1, 2013. That notice stated that she had until January 28, 2012, to appeal.
3. When the petitioner died, she had not contributed anything toward her medical care and owed the nursing home \$7,824.
4. The petitioner's sister filed an appeal on the petitioner's behalf concerning her contribution toward her medical costs on April 8, 2012.

### **DISCUSSION**

Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." Wis. Adm. Code § DHS 103.07(1)(d). The county agency notified the petitioner on December 12, 2012, that beginning on January 1, 2013, she must contribute \$1,956 a month toward her medical costs. She never paid this. On April 5, 2013, she died, owing \$7,824. Her sister filed an appeal on her behalf on April 8, 2013, claiming that the nursing home never informed the petitioner's family of her share of her medical costs.

Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. One could argue that the petitioner had until February 14, 2013, to appeal because the action she was appealing did not take effect until January 1, 2013. Regardless, her appeal is late, and I have no jurisdiction to hear it. I am aware that the petitioner's family contends that the nursing home's negligence caused the appeal to be late. This may be true, but I cannot extend the deadline for errors committed by a party other than the county agency. Moreover, because the only way the nursing home can possibly recover the money owed to it is to file a claim against the petitioner's estate, any error it may have committed does not affect the petitioner's relatives because they are not responsible for her medical costs.

### **CONCLUSIONS OF LAW**

There is no jurisdiction to consider the petitioner's appeal because it is untimely.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 28th day of May, 2013

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\sMichael D. O'Brien  
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 May 28, 2013.

Polk County Department of Social Services  
Division of Health Care Access and Accountability