



FH
[REDACTED]

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

In the Matter of

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

DECISION

MDV/148693

PRELIMINARY RECITALS

Pursuant to a petition filed April 12, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on May 20, 2013, at Appleton, Wisconsin.

The issue for determination is whether the petitioner’s appeal of the November 14, 2012 denial of her Institutional Medical Assistance (MA) application due to divestment is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Representative:

[REDACTED] [REDACTED], daughter
[REDACTED]
[REDACTED]

Respondent:

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

By: Janet Hertzberg, ES lead worker
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Outagamie County. She died on December 30, 2012.

2. The county agency sent a November 14, 2012 manual Negative Notice to the petitioner at her correct address stating that her application for Institutional Medicaid for the months of August 8, 2012 through July 22, 2013 has been denied due to divestment. The divestment period was August 8, 2012 until July 22, 2013. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) within 45 days of the notice's effective date (deadline of December 29, 2012). See Exhibit 1.
3. The petitioner's husband and her daughter, [REDACTED] [REDACTED], admitted that they received the November 14, 2012 notice (Exhibit 1).
4. The petitioner's daughter faxed an appeal to the Division of Hearings and Appeals (DHA) which was received at DHA on April 12, 2013.
5. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the November 14, 2012 Institutional MA denial prior to April 12, 2013.

DISCUSSION

An Administrative Law Judge (ALJ) 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 (MA) must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0.** An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the November 14, 2012 notice stating that petitioner's application for Institutional Medical Assistance (MA) was denied due to divestment.

During the May 20, 2013 hearing, petitioner's husband and her daughter admitted that they received the November 14, 2012 notice (Exhibit 1). There was no evidence that anyone at the county agency attempted to prevent the petitioner from filing a timely appeal at DHA. Petitioner's daughter explained that there was much family confusion when her mother passed away, and that she was discussing the MA denial with some county agency workers. However, the denial notice was November 14, 2012 and her mother did not pass away until about six weeks later (December 30, 2012). Furthermore, the fact that petitioner's daughter was discussing the denial with county personnel does not remove the 45 day time deadline to file an appeal with DHA. Finally, the county agency also sent a November 14, 2012 notice to the petitioner stating that if petitioner wanted to request an Undue Hardship Waiver, she must file that request within 20 days of that November 14, 2012 notice. The petitioner did not file any hardship request within the 20 day time deadline.

During the May 20, 2013 hearing, petitioner's representative was not able to establish any good cause for not filing an appeal with DHA during the 45 day period (until December 29, 2012) after receiving the November 14, 2012 notice denying her MA application. Accordingly, for the above reasons, I must conclude that because petitioner did not appeal the November 14, 2012 MA denial within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the November 14, 2012 Institutional MA denial issue in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the November 14, 2012 denial of petitioner's Institutional MA application due to divestment, as the appeal is untimely.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 25th day of June, 2013

\sGary M. Wolkstein
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 June 25, 2013.

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