



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/149275

PRELIMINARY RECITALS

Pursuant to a petition filed May 07, 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 telephone hearing was held on June 18, 2013.

The issue for determination is whether the petitioner request for hearing is timely.

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: Mary Chucka, OTR

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Rock County.
2. On or about August 30, 2012, the petitioner requested a Semi Electric Hospital bed. Following respondent's requests for corrections and clarifications, the Division of Health Care Access and Accountability denied the request on October 30, 2012.

3. The written denial was addressed to petitioner's correct address, and specified that, "You will lose your right to an appeal if your request to appeal is not received ... by 12/14/2012.
4. Petitioner's appeal was postmarked May 7, 2013, which is 144 days after the specified appeal deadline.

DISCUSSION

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. The Division of Health Care Access and Accountability denied the petitioner's Prior Authorization request on October 30, 2012. She appealed May 7, 2013, or 189 days later. Because the appeal is late, I have no jurisdiction to consider it and therefore must deny it.

Petitioner argued that she did not receive the notice of denial, but did not establish any issue with her mail delivery. Notably, the record does not indicate that any mail was returned to the respondent as undeliverable. Furthermore, petitioner's provider was also sent notice of the denial on October 30, 2013. I have no equitable powers that would allow me to consider the fairness of the situation and must only apply the law as it is written.

Nothing in this decision would preclude petitioner from submitting a new prior authorization request for consideration by the respondent.

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 19th day of August, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 19, 2013.

Division of Health Care Access And Accountability