



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/149584

PRELIMINARY RECITALS

Pursuant to a petition filed May 23, 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 June 13, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether this appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED], by her son Sergei
[REDACTED]
[REDACTED]

Respondent:

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

By: Cindy Zander, RN

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. A prior authorization request seeking Medicaid payment for 28 hours (or 112 units with each unit = 15 minutes) per week of personal care services plus one hour per day (28 units per week) for other personal care services but not defined otherwise except with a modifier code of U3 was filed on

behalf of Petitioner on or about March 5, 2013. The total cost was noted to be \$36,172.50. The requesting provider is Independence First.

3. The prior authorization was approved in part. The hour per day with the U3 modifier code was approved in full. The 28 hour per week portion of the request was partially approved - a total of 19 hours or 76 units per week were authorized for Medicaid payment.
4. The notice indicating the Department's disposition of the PA is dated April 5, 2013 and states that the appeal deadline is May 20, 2013 – a Monday. That notice was sent to Petitioner at the above address. This appeal was filed with the Division of Hearings and Appeals on Thursday, May 23, 2013.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. §49.45(5)(a), *Wis. Stats.*

In reviewing this case for a decision, it became apparent that the appeal is not timely. The timely limit for the appeal was May 20, 2013 – a Monday. It was noted to be received on the postmark date which was May 23, 2013 – a Thursday. This is 3 days past the appeal deadline and the Division of Hearings and Appeals no longer has authority to make a determination on the merits of this matter.

I will bluntly note here, however, that the times requested and allocated for this case are confusing. The Department explanation letter makes no mention of the one hour per day service though the notice of action clearly indicates approval. The PA indicates that Petitioner she requires 105 units per week but requests 140 units (112 plus 28). The testimony offered on behalf of Petitioner was far too vague to justify much of a change in the approved time. Nonetheless, the PA notes that she lives with family; the testimony was that Petitioner lives alone in a house owned by family. The PA and the Department's explanation letter indicates Petitioner takes no medications; an addendum by the provider as well as testimony indicates that Petitioner takes at least 9 medications 2 times per day and needs assistance with that task. If I were making a decision on the merits, I would approve some fairly limited additional time for about 60 days and tell Petitioner to ask the provider to start over. Because this is untimely, I am not approving anything but will note that Petitioner may contact the provider and ask that it start this PA process over with more a more accurate submission.

Finally, I note for Petitioner that her provider will not receive a copy of this Decision; but Petitioner may provide a copy to the provider if she wants them to have it.

CONCLUSIONS OF LAW

That this appeal is untimely and the Division of Hearings and Appeals does not, therefore, have authority to make a determination on the merits of the matter

THEREFORE, it is

ORDERED

That this 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 Milwaukee,
Wisconsin, this 19th day of August, 2013

\sDavid D. Fleming
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 19, 2013.

Division of Health Care Access And Accountability