



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/151283

PRELIMINARY RECITALS

Pursuant to a petition filed August 09, 2013, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a telephone hearing was held on October 22, 2013. A hearing scheduled for September 4, 2013, was rescheduled at petitioner's request.

The issue for determination is whether the Division of Hearings and Appeals (DHA) has jurisdiction to consider the instant appeal.

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: Melody Suthers
Division of Health Care Access And Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner received a letter notice dated January 24, 2013, from her HMO, Managed Health Services; the notice informed her that the HMO had approved her request for personal care worker (PCW) services with a modification: "Service has been reduced based on a personal needs

assessment completed by an independent physical/occupational therapist.. Specifically, there was more independence in grooming, toileting, mobility and transfers. The reduced services are not approved as ... 88 units per week for a 6 month authorization starting February 8, 2013.” Exhibit 2, att. 3. The notice also informed petitioner of her appeal rights and of the process for requesting a Hearing, including the 90-day time limit for requesting a Hearing. *Id.*

3. Petitioner did not request a Hearing until August 9, 2013, a full six months following the start of the 6 month authorization period. Petitioner’s request for a Hearing was made by way of an undated typewritten request, postmarked August 9, 2013, and received by DHA via U.S. Mail on August 12, 2013.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning MA is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d); Wis. Stat. § 49.45(5); Wis. Admin. Code § DHS 104.01(5)(a)3; Wis. Admin. Code § HA 3.05(3). A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

In this case, the action being appealed is the January 24, 2013, notice concerning PCW hours. Petitioner's request for a Hearing was not filed until August 9th, 2013. See, Wis. Admin. Code §§ HA 3.05(2)(a) & 3.05(3)(c). This is well outside of the 90 days noted by the notice, as well as the 45 days as dictated by law. I note that the notice does not specify the 45 day deadline, but instead refers to a 90 day period. The notice further states that an appeal to DHA may be filed “at any time during the appeal process.” Exhibit 2, att. 3. I would interpret that to double the petitioner’s appeal timeframe. However, as noted previously, the appeal was filed well after even the 90 day period expired. In fact, the 6 month period of modified PCW services appears to have concluded prior to the appeal date, i.e. the 6 month approved period for PCW services commenced on February 8, 2013. The appeal was filed 6 months and one day later, on August 9, 2013. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

CONCLUSIONS OF LAW

For the reasons discussed 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.

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 26th day of November, 2013

\sPeter McCombs
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 November 26, 2013.

Division of Health Care Access And Accountability