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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION UPON REHEARING

MPA/151354

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 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 October 1, 2013. A decision was issued on October 11, 2013, dismissing Petitioner's appeal as untimely.

On November 7, 2013, the Petitioner mailed a rehearing request. On November 21, 2013, the rehearing request was granted to address the timeliness issue only. The hearing took place on December 17, 2013, at Milwaukee, Wisconsin.

The Exhibits and Testimony admitted at the October 1, 2013 hearing are hereby incorporated by reference.

The issue for determination is whether the Petitioner's appeal was timely filed.

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, Room 651
Madison, Wisconsin 53703

By: OIG by letter

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

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On May 7, 2013, Independence First, on behalf of Petitioner, requested authorization for 42 hours per week of PCW services, 24 additional hours to be used PRN/as needed with 7 hours per week travel time for the PCW. The Prior Authorization request listed Petitioner's address as C/O JH [REDACTED] Milwaukee, WI. (Exhibit 4, pg. 4)
3. On June 10, 2013, DHS sent Petitioner a letter indicating it was modifying the request for services. The letter was sent to Petitioner in care of JH, at [REDACTED] Milwaukee, WI. On June 10, 2013, DHS sent Independence First a letter advising them of the same. (Exhibit 4, pgs. 25-30)
4. Petitioner filed a request for fair hearing that was received on August 12, 2013. (Exhibit 1)
5. JH is Petitioner's mother and personal care worker. She is also Petitioner's legal guardian and lives next door to Petitioner at the [REDACTED] address. Petitioner's address is [REDACTED]. (Testimony of Petitioner)
6. National Seating and Mobility, Inc. submitted a prior authorization request on behalf of Petitioner on July 3, 2013. In that request, Petitioner's address is listed in care of JH at [REDACTED] Milwaukee, WI. (Exhibit 3, pg. 30)

DISCUSSION

A hearing officer 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 concerning medical assistance must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application, the reduction of services or termination of an ongoing case.

In this case, the date of negative action was June 10, 2013. The Petitioner's appeal was filed on August 12, 2013, 63 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The Petitioner asserts that neither he nor his mother received the June 10, 2013 notice advising him that his request for personal care hours had been modified. The Petitioner also asserted that he did not become aware of the issue until an employee of Independence First contacted him sometime in June when his hours were reduced.

The agency sent the June 10, 2013 notice to the address provided on the May 2013 prior authorization request, which was in care of JA at [REDACTED]. Given Petitioner's testimony that JH is his legal guardian and lives at the [REDACTED] address, the agency sent the June 10, 2013 notice to a correct address. I note that a subsequent prior authorization request dated July 2013, also listed Petitioner's address in care of JH at [REDACTED].

Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, "summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage." Further, "the mailing of a letter creates a presumption that the letter was delivered and received." State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.w.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613.

There is no evidence in the record to support Petitioner's claim that his mother and he did not receive the June 10, 2013 notice.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the Petition 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, Room 651, 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 December, 2013.

\sMayumi M. Ishii
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 December 19, 2013.

Division of Health Care Access And Accountability