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

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In the Matter of

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

DECISION

MPA/152118

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 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 telephone hearing was held on November 04, 2013.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

Written Appearance by: Theresa Walske, MS, CCC-SLP  
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  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Dane County.

2. On June 6, 2013, the petitioner with his provider, [REDACTED] [REDACTED], Inc., submitted a Prior Authorization requesting 28 bi-weekly speech and language therapy sessions beginning on May 16, 2013, at a cost of \$6,617.00.
3. The petitioner is a seven-year-old girl diagnosed with Downs Syndrome.
4. The petitioner receives speech therapy from her school district. Her school Individual Education Plan was not submitted by petitioner's provider with the PA request.
5. The PA request was returned to the provider with a request for further information; following resubmission and review, the respondent denied the PA request on July 22, 2013. That notice informed the petitioner that she must file an appeal with the Division of Hearings and Appeals or the local county agency by September 5, 2013.
6. Petitioner filed a Request for Fair Hearing on September 12, 2013.

### **DISCUSSION**

The petitioner requests that the medical assistance program pay for speech and language therapy that would cover the petitioner's needs for said therapy while school is not in session. The inspector general denied her request on July 22, 2013, and told her she must appeal by September 5, 2013. The Division of Hearings and Appeals did not receive an appeal until September 12, 2013.

Those seeking medical assistance benefits must appeal within 45 days of the "effective date of the adverse action." An appeal is "considered filed on the date of actual receipt by the division or agency, or the date of the postmark, whichever is earlier." Wis. Admin. Code, § HA 3.05(3)(c). The request "may be made to the agency or the division." If an agency receives a hearing request it must "immediately date-stamp the request and forward it to the division [of hearings and appeals]." Wis. Admin. Code, § HA 3.05(2)(a)(a)

There is no evidence that any appeal paperwork was filed prior to September 12, 2013, nor is there evidence of any appeal paperwork filed on or before September 5, 2013. When an appeal is late, the Division of Hearings and Appeals loses its legal authority to consider it, meaning that it must dismiss the appeal. The respondent correctly asserted that petitioner needed to file its appeal by September 5, 2013, which is 45 days following the denial of the petitioner's PA request.

I note that nothing prevents the petitioner from filing a new request for summer speech and language therapy. If she does, she and her provider should consider the objections raised by Theresa Walske in her October 2, 2013, letter explaining the denial.

### **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 25th day of November, 2013

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\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 25, 2013.

Division of Health Care Access And Accountability