



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

---

In the Matter of

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

DECISION

MGE/152177

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 16, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on October 24, 2013, at New Richmond, Wisconsin.

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]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Cheryl Odle

St. Croix County Department of Human Services  
1445 N. Fourth Street  
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The agency initially denied the petitioner’s application for medical assistance on March 6, 2013, because she failed to verify assets. The county agency did not appear at that hearing because its lead agency did not relay the notice of hearing to it.

3. Based upon the evidence presented at the original hearing held on May 22, 2013, the Division of Hearings and Appeal issued a decision in June 2013 ordering the agency to determine the petitioner's eligibility without requiring verification of bank account that closed at least eight years earlier. That decision indicated that if the petitioner continued to disagree with the agency's decision she could file a new appeal.
4. The county agency notified the petitioner on June 21, 2013, that it was continuing to deny her application because she failed to verify other assets such as a burial trust and other funds. That notice indicated that she had 45 days to appeal.
5. The petitioner appealed the agency's second denial on September 16, 2013.

### **DISCUSSION**

This is the second hearing involving the agency's March 6, 2013 denial of the petitioner's application for medical assistance because she allegedly failed to verify assets. No one from St. Croix County appeared at the first hearing because the lead agency failed to notify if of the hearing. Although the St. Croix workers were not at fault, they are agents of the state Department of Health Services. When the lead agency acting on the department's behalf makes an error that affects what the county agency does, the county agency must suffer the consequences of the lead agency's error. In this matter, the initial hearing went on and a decision was issued without the county agency's input. The agency was not entitled to a rehearing. That decision issued the following order:

That this matter is remanded to the county agency with instructions that it continue processing the petitioner's application for medical assistance with the information it currently has and that it determine whether the petitioner is eligible for medical assistance within 10 days of the date of this decision. The agency shall not deny the petitioner's application because she failed to verify the bank account discussed in this decision. If the petitioner disagrees with the agency's decision, she may file a new appeal.

The county agency reviewed the decision and continued to deny the application, finding that the petitioner failed to verify assets besides the bank account discussed in the original decision. I would be reluctant to uphold the agency on the merits because it presented no documentation showing that it asked for these assets. However, the initial decision clearly allowed the agency to continue to deny the application. It also gave the petitioner the right to appeal if it did so. When the agency takes a negative action, the person seeking benefits has 45 days to challenge that decision. Wis. Adm. 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 regardless of the strength of the petitioner's evidence. The county agency notified the petitioner on June 21, 2013, that it was continuing to deny her application because she failed to verify other assets such as a burial trust and other funds. That notice correctly indicated that she had 45 days to appeal. She did not appeal the agency's second denial until September 16, 2013. Because this appeal is late, I have no jurisdiction to consider it regardless of the strength of her case.

### **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 22nd day of November, 2013

---

\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on November 22, 2013.

St. Croix County Department of Human Services  
Division of Health Care Access and Accountability