



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MGE/152183

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on December 05, 2013.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to hear the merits of this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted] (not present at December 5, 2013 Hearing)
c/o [Redacted]
[Redacted]
[Redacted]

Represented by:

[Redacted] petitioner's son & Power of Attorney ["POA"]
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Sherry L. Quirk, Lead ES Supervisor
Tami Bliss, ESS
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner received a notice dated June 24, 2013 and entitled *About Your Benefits*; that notice informed petitioner that her May 31, 2013 application for MA was denied; the notice also informed petitioner of her appeal rights and of the process for requesting a Hearing, including the 45-day time limit for requesting a Hearing.
3. Petitioner did not request a Hearing concerning the denial of her May 31, 2013 application for MA until September 18, 2013; her request for a Hearing was made by way of a hand-written letter from her son and Power of Attorney [“POA”] dated September 17, 2013 received by DHA on September 19, 2013 via U.S. Mail postmarked September 18, 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) (2011); Wis. Stat. § 49.45(5)(a) (2011-12); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (February 2013); *BadgerCare Plus Eligibility Handbook* [“BC+ Handbook”] 29.2.; *Income Maintenance Manual* [“IMM”] 3.3.2. 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) (February 2013).

In this case, the action being appealed is the June 24, 2013 denial of petitioner’s May 31, 2013 MA application. Petitioner’s request for a Hearing was not filed until September 18, 2013. See, Wis. Admin. Code §§ HA 3.05(2)(a) & 3.05(3)(c) (February 2013). This is well outside of the allowable 45 days. Therefore, petitioner’s appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner’s appeal.

Petitioner’s son was asked why a Hearing as not requested sooner in light of the June 24, 2013 *About Your Benefits* notice. He testified that he did not have a very good reason for not asking for a Hearing sooner. He testified that he was trying to get paperwork together. This is unfortunate, but does not create jurisdiction where none otherwise exists.

Finally, it is noted that attached to petitioner’s September 2013 letter requesting a Hearing is a copy of a *Human Services Agency Action Notice* dated August 13, 2013. That notice states that an unspecified application was denied due to “failure to provide documentation/verification for the Medicaid application.” It is not known what application this notice was referring to. It is also not clear that petitioner wished to appeal this denial. At the December 5, 2013 Hearing petitioner’s son and POA testified clearly that petitioner was only appealing the denial of her May 31, 2013 MA application. If petitioner wished to appeal some other issue, or wishes to argue that her request for a Hearing was made timely in light of the August 13, 2013 *Human Services Agency Action Notice*, petitioner should immediately request rehearing. A rehearing must be received by DHA no later than 20 days after the date of this *Decision*.

**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, 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 Madison,  
Wisconsin, this 6th day of December, 2013

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\sSean P. Maloney  
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 6, 2013.

Rock County Department of Social Services  
Division of Health Care Access and Accountability