



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

In the Matter of

██████████ ██████████
c/o ██████████ ██████████
██
██

DECISION

MPA/152337

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 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 [“DCHAA”] in regard to Prior Authorization [“PA”] under the Medical Assistance [“MA”] program for comprehensive orthodontic treatment and periodic orthodontic treatment visits for petitioner, 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 in this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████ (not present at December
5, 2013 Hearing)
c/o ██████████ ██████████
██
██

Represented by:

██████████ ██████████, petitioner’s mother
██
██

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Robert Dwyer, DDS, Dental Consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Rock County.
2. Petitioner's provider, Dr. [REDACTED], DDS of West Allis, Wisconsin, requested PA (P.A. # [REDACTED]; dated April 10, 2013) for MA coverage for comprehensive orthodontic treatment and periodic orthodontic treatment visits for petitioner at a total cost of \$6,140.00.
3. DCHAA denied PA # [REDACTED] for coverage of comprehensive orthodontic treatment and periodic orthodontic treatment visits for petitioner; DHCAA sent petitioner a letter dated April 23, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial; that April 23rd letter explained petitioner's appeal rights and clearly set-out the appeal deadline, where an appeal request must be sent to, and the address of DHA to which an appeal must be mailed.
4. Petitioner's requested a Hearing by a *Request For Fair Hearing* form dated September 11, 2013 and received by DHA on September 25, 2013 via U.S. Mail postmarked September 23, 2013.

DISCUSSION

DHA has authority to hold a Hearing and make a decision only if the law provides for such authority. In legal language this authority is known as *jurisdiction*.

In order for DHA to have jurisdiction, an appeal of an action concerning MA, such as a denial of PA, must be made within 45 days of the effective date. 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); see also, 42 C.F.R. § 431.221(d) (2011). A Hearing request that is not filed within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

A Hearing request is considered filed on the date of actual receipt by DHA or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c) (February 2013); See also, Wis. Admin. Code §§ HA 3.02(2) & 3.05(2)(a) (February 2013); and, Wis. Admin. Code § DHS 101.03(8) (December 2008). In this case the Hearing request was postmarked September 23, 2013. Thus, it is considered filed on September 23, 2013.

In this matter the effective date of the action was April 23, 2013 -- the date of the letter denying petitioner's request for PA. Forty-five days from April 23, 2013 is June 7, 2013. Petitioner's request for a Hearing was not filed until September 23, 2013. Thus, petitioner's request for a Hearing was not made within the 45-day time period and DHA does not have jurisdiction.

Petitioner's mother testified she did not request a Hearing sooner because she was checking on things and went to the orthodontist 2 times and also to a regular dentist. This is unfortunate, but it does not create jurisdiction where none otherwise exists.

CONCLUSIONS OF LAW

For the reasons stated 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 9th day of December, 2013

\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 9, 2013.

Division of Health Care Access And Accountability