



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/152767

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 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 November 19, 2013, at Milwaukee, Wisconsin.

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

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. A prior authorization (PA) request seeking Medicaid payment for 40.25 hours (or 161 units with each unit = 15 minutes) per week of personal care worker (PCW) services plus 24 hours per year or 96 units to be used as needed and one hour per day (28 units per week) for travel was filed on behalf of

Petitioner on or about July 1, 2013. The total cost was noted to be \$50,300.88. The requesting provider is Independence First.

3. The prior authorization was approved in part. 24.75 hours of PCW services per week were approved as was the time to be used as needed. The travel was not approved as the Department believed Petitioner lives with the caregiver.
4. The notice indicating the Department's disposition of the PA is dated August 15, 2013 and states that the appeal deadline is September 29, 2013 – a Sunday. That notice was sent to Petitioner at the above address. This appeal was filed with the Division of Hearings and Appeals on Thursday, October 10, 2013.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medicaid matters must be filed within 45 days of the notice of the agency decision. §49.45(5)(a), *Wis. Stats.*

In reviewing this case for a decision, it became apparent that the appeal is not timely. The time limit for the appeal was September 29, 2013, a Sunday so effectively Monday, September 30. It was noted to be received on the postmark date which was October 10, 2013 - a Thursday. This is 10 days past the effective appeal deadline and the Division of Hearings and Appeals no longer has authority to make a determination on the merits of this matter.

Because this is untimely, I am not approving any additional PCW time but will note that Petitioner may always contact the provider and ask that it request additional time if it can document the need for those additional services.

Finally, I note for Petitioner that her provider will not receive a copy of this Decision; but Petitioner may provide a copy to the provider if she wants them to have it.

CONCLUSIONS OF LAW

That this appeal is untimely and the Division of Hearings and Appeals does not, therefore, have authority to make a determination on the merits of the matter

THEREFORE, it is

ORDERED

That this 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, 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 6th day of January, 2014

\sDavid D. Fleming
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 6, 2014.

Division of Health Care Access and Accountability