



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/154035

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 10, 2013, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for pediatric comprehensive care services, a hearing was held on January 21, 2014, by telephone.

The issue for determination is whether petitioner's appeal was timely

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Written submission of Kelly Townsend, Nurse Consultant

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 5-year-old resident of Racine County who receives MA. He formerly resided with his family in Milwaukee County.
2. On August 8, 2013, Milwaukee Center for Independence filed a prior authorization request for pediatric comprehensive care services on petitioner's behalf, PA no. [REDACTED]. The request showed petitioner's home address to be on [REDACTED], [REDACTED], Wisconsin.

3. By a letter dated October 15, 2013, the DHCAA denied the request. The notice was sent to the address shown on the PA request. The notice included language that the decision could be appealed, with a deadline for the appeal of November 29, 2013.
4. An appeal was filed with the Division of Hearings and Appeals on December 10, 2013.

### DISCUSSION

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3). Language concerning the right to appeal and the time limit is included on all department notices. The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

It is undisputed that the appeal in this case was filed on December 10, 2013, eleven days after the deadline. Mr. [REDACTED], petitioner's authorized representative, was the only person who appeared at the hearing on January 21, 2014. Petitioner's mother or any other person with direct knowledge of the case did not appear and thus did not testify.

Mr. [REDACTED] stated that petitioner's mother did not receive the October 15 negative notice because it was sent to the "wrong" address. Apparently petitioner's family moved to Racine at some point.

There are several problems with the case as presented. First and foremost there is no actual testimony that petitioner's mother did not receive the notice. It is clear that the PA request noted an [REDACTED] address, and the notice was sent to the [REDACTED] address. The DHCAA did not send the notice to an erroneous address. Mr. [REDACTED] suggested that the Department should have known to send the notice to the Racine address because the agency got petitioner's mother in for a review. Again, however, that is speculation because there is no evidence to support the suggestion. Mr. [REDACTED]'s statements are hearsay based upon no direct knowledge.

I have no choice but to find the appeal to be untimely. The notice was sent to the address provided to the DHCAA, there is no evidence that it was undelivered, and there is no evidence that it was not received by the family. There is no evidence that the family had or did not have mail forwarded to a new address.

### CONCLUSIONS OF LAW

Petitioner's appeal of a denial of prior authorization for pediatric care service was untimely.

**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 27th day of January, 2014

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\sBrian C. Schneider  
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 January 27, 2014.

Division of Health Care Access and Accountability