



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/154198

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 17, 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 June 04, 2014, at La Crosse, Wisconsin.

The issue for determination is whether this 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]  
[REDACTED]

Respondent:

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

By: Theresa Walske, SLP (in writing)  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of La Crosse County.

2. Petitioner's provider filed a request for prior authorization for speech and language therapy on September 11, 2014.
3. The PA request was denied by letter dated October 28, 2014. The letter stated that petitioner had 45 days in which to request a hearing. The letter actually states that "[y]ou must mail or deliver your appeal to your local county or tribal agency or the Division of Hearings and Appeals so it is received by the 45-day deadline which is 12/12/13."
4. Petitioner mailed a hard-copy request to the Division of Hearings and Appeals (ex. #5).
5. Petitioner also faxed a copy of the hearing request to the Department's Forward Health Office (ex. #6). Each page of this fax bears a fax machine header indicating the date and time stamp of December 13, 2013 at 2:28pm from Gunderson Lutheran Internal Medicine. The Department then forwarded the request to DHA and it was received on December 17, 2013.
6. The mailed hard copy request was received at DHA on December 17, 2013.

### DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. See Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. Though the Department's letter states that the appeal must be received at DHA by the 45<sup>th</sup> day, I will apply the filing rule from Wis. Admin. Code § HA 3 which dictates that a document is filed when it is postmarked or faxed. The hard copy that was mailed was received at DHA on December 17, 2013. The envelope does not bear a postmark. The faxed request was, based on the best evidence available, faxed to the Department on December 13, 2014. Though this was an improper means of requesting an appeal, DHA has historically allowed a timely request mistakenly sent to the Department to form the basis of a perfected appeal. But, this fax was a day late.

I note that I received a written argument from petitioner's counsel (ex. #7) that indicates that petitioner's mother claims to have faxed the request to DHA on December 12, 2013. DHA has no record of such a fax. I trust that she is likely thinking of the fax to the Department on the 13<sup>th</sup>. Counsel did not provide any corroborating evidence of a timely request such as a return receipt or a fax confirmation sheet.

The petitioner's appeal was filed 46 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case. The petitioner's provider may submit a new prior authorization request at any time.

### CONCLUSIONS OF LAW

The appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That this matter is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 11th day of June, 2014

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\sJohn P. Tedesco  
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 June 11, 2014.

Division of Health Care Access and Accountability  
Attorney William Skemp