



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/155730

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the [REDACTED] Health and Human Services in regard to Medical Assistance, a hearing was held on April 08, 2014, at Waukesha, Wisconsin.

The record was held open until April 9, 2014 to allow the Petitioner to supplement the record. No documentation was submitted by the designated deadline.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

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

By: Karen Pearson, Economic Support Specialist
[REDACTED] Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

Ben Decker, IRIS Participant Services Specialist
1 South Pickney Street, Suite 320
Madison, WI 53703-2887

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED]
2. On October 14, 2013, the Moraine Lakes Consortium sent Petitioner a notice indicating that effective November 1, 2013, she would no longer be enrolled in a waivers program because she did not pay the monthly cost share/spend down amount. (Exhibit 1)
3. On October 15, 2013, the Department of Health Services, Division of Long Term Care sent Petitioner a letter indicating that she would be dis-enrolled from the IRIS program on October 31, 2013. (Exhibit 13, pg. 6)
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on February 26, 2014.

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 concerning medical assistance must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application, the reduction of benefits, or as in this case, the termination of benefits.

In the case at hand, Petitioner's enrollment in the waivers program was terminated effective November 1, 2013. Thus, the Petitioner had 45 days from November 1, 2013 to file an appeal. Regrettably, the Petitioner waited until February 26, 2014 to file an appeal. Consequently, the Petitioner's appeal was filed 135 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition 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 10th day of April, 2014.

\sMayumi M. Ishii
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

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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 10, 2014.

██████████ Health and Human Services
Bureau of Long-Term Support