



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

HMO/156112

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 13, 2014, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a telephonic hearing was held on April 09, 2014, at Milwaukee, Wisconsin. At the request of petitioner, the record was held open for one week for petitioner to submit any evidence of filing her appeal prior to March 13, 2014 and the DHS's response. The petitioner failed to submit any additional evidence to DHA by April 16, 2014 or even by the date of this decision.

The issue for determination is whether petitioner's appeal of the HMO's December 26, 2013 reduction of her prior authorization (PA) for personal care worker hours was 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: Meri DeGarmo, Nurse Consultant  
iCare HMO  
1555 N. Rivercenter Drive  
Suite 206  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner is a 61 year old resident of Milwaukee County.
2. The petitioner is enrolled in the Independent Care Health Plan (iCare) HMO.
3. iCare HMO sent a December 26, 2013 notice to the petitioner stating that her prior authorization (PA) request for personal care worker services was reduced from 3.0 to 1.5 hours per day, and approved as modified. That notice stated specifically that there was a 45-day time limit for filing any appeal at the Division of Hearings any appeal based upon the December 26, 2013 notice reducing her PCW hours. See Exhibit 1.
4. The DHS nurse consultant reviewed the petitioner's appeal and determined that the reduction of PCW hours by the HMO was justified.
5. The petitioner admitted receiving the December 26, 2013 notice (Exhibit 1).
6. The petitioner mailed her appeal letter on March 13, 2014 to the Division of Hearings and Appeals (DHA) which was received at DHA on March 17, 2014. See Exhibit 2.
7. During the hearing or while the record was held open, petitioner did not provide any evidence that she appealed the PCW reduction to DHA prior to March 13, 2014.

### DISCUSSION

An administrative law judge (ALJ) 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.** Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). A negative action can be the denial or modification of an application or prior authorization request, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the December 26, 2013 HMO notice to the petitioner stating that her PA request for 3 hours per day of PCW hours was reduced to 1.5 hours per day and approved as modified. See Exhibit 1. The petitioner mailed her appeal letter on March 13, 2014 to the Division of Hearings and Appeals (DHA) which was received at DHA on March 17, 2014 (which is after the 45-day deadline).

During the April 9, 2014 hearing, the petitioner admitted receiving the December 26, 2013 notice (Exhibit 1). She alleged vaguely that she submitted an appeal to DHA prior to March 13, 2014. However, during the hearing or while the record was held open, petitioner did not provide any evidence that she appealed the PCW reduction to DHA prior to March 13, 2014. See also above Preliminary Recitals. Therefore, based upon the hearing record, the petitioner's appeal was filed more than 45 days after the December 26, 2013 negative notice which informed petitioner that her prior authorization for PCW hours was reduced. Accordingly, I must conclude that because petitioner did not appeal the prior authorization denial within the 45-day time limit, the Division of Hearings and Appeals has no jurisdiction in this case.

### CONCLUSIONS OF LAW

There is no jurisdiction regarding the petitioner's appeal of the December 26, 2013 prior authorization reduction of her PCW hours, as the appeal was untimely.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 10th day of June, 2014

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\sGary M. Wolkstein  
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 10, 2014.

iCare  
Division of Health Care Access and Accountability