



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████ ██████  
c/o ██████ ██████  
██████  
████████████████████

DECISION

MPA/156562

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 28, 2014, 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 9, 2014, at Barron, Wisconsin. A hearing scheduled for May 13, 2014, was rescheduled at the petitioner's request..

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ ██████  
c/o ██████ ██████  
██████  
████████████████████

Respondent:

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

By: Theresa Walske

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

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Barron County.

2. On December 30, 2013, the petitioner along with his provider, Lakeview Medical Center, requested 16 weekly speech and language sessions beginning on January 8, 2014. On February 5, 2014, after receiving additional information at its request, the Division of Health Care Access and Accountability modified the request, allowing four sessions over the period.
3. The petitioner appealed the modification on March 28, 2014.

### DISCUSSION

Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. The Division of Health Care Access and Accountability modified the petitioner's request for speech therapy on February 5, 2014, allowing four sessions rather than the requested 16. He appealed on March 28, 2014, or 51 days later. His mother testified that she had difficulty dealing with the bureaucracy handling the matter and that it was three weeks before she got what she needed to appeal. The record does indicate that the Division asked for and received additional information after receiving the request, a process that took about three weeks. I assume that this is what the petitioner's mother referred to when she indicated that she had to wait for information before appealing.

But even if she was waiting for a response from the Division after she submitted this information, the evidence indicates that this should not affect her ability to appeal on time. The Division's letter modifying the request was sent to the petitioner's address and stated that any appeal must be filed by March 22, 2014. That letter indicated that the letter must include "[t]he reason you think the denial or modification of the prior authorization is wrong" and that "[y]ou will lose your right to an appeal" if it is late. The notice does not require the petitioner to provide any specific evidence in order to appeal; it is enough for him to state that he has only been allowed four of the requested 16 sessions. There is no evidence that he had insufficient information to comply with this requirement. Because the appeal is late, I have no jurisdiction to consider it and must dismiss it.

### CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner's appeal because it is untimely.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 7th day of July, 2014

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\sMichael D. O'Brien  
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 July 7, 2014.

Division of Health Care Access and Accountability