



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MGE/156825

PRELIMINARY RECITALS

Pursuant to a petition filed April 14, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on May 29, 2014, at Racine, Wisconsin.

NOTE: The record was held open so that the agency could provide the Power of Attorney Documents. They have been marked as Exhibit 9 and entered into the record. Also on July 8, 2014, Petitioner's son/POA submitted a letter indicating that the application for benefits was approved, but without the requested backdate. The Petitioner's letter has been marked as Exhibit 10.

The issue for determination is whether the Racine County Department of Human Services (the agency) correctly denied the Petitioner's February 2014 application for Medicaid benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

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Respondent:

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

By: Rhonda Kramer, Team Lead Economic Support Specialist Fair Hearings
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On February 18, 2014, Petitioner's son and Power of Attorney (POA) completed an application for Wisconsin Medicaid for the Elderly, Blind or Disabled seeking Institution Long Term Care Benefits and requested a three month backdate of benefits. Petitioner's son/POA indicated on the application that he was the POA. (Exhibit 3)
3. On March 6 and 7, 2014, the agency sent the Petitioner notices of action and proof needed, requesting, in part, that the Petitioner sign the application, because the agency did not have the power of attorney paperwork. The notices did not specifically request a copy of the power of attorney documentation. (Exhibits 4 and 5)
4. On March 11, 2014, the Petitioner son/POA submitted revocable trust documents to show that he had authority to sign the application on behalf of the Petitioner. (Exhibit 8)
5. On March 19, 2014, the agency sent a "free form" letter explaining that the trust documents were not sufficient. (Exhibit 8)
6. On March 31, 2014, the agency sent the Petitioner a notice indicating that his application was denied because there was no valid signature on the application. (Exhibit 7)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 14, 2014. (Exhibit 1)
8. As of May 10, 2002, Petitioner named his son as his power of attorney and granted his son authority to engage in litigation on his behalf and to execute all necessary instruments for health insurance, including, but not limited to any instruments requested by Medicaid. (Exhibit 9)
9. The Durable Power of Attorney documentation also states, "This power of attorney shall not be affected by subsequent disability, incapacity or incompetency of the principal." (Exhibit 9, pg. 6)
10. On June 30, 2014, the agency sent Petitioner a notice indicating that his application for Institution Long Term Care benefits was approved, effective February 2014. (Exhibit 10)

DISCUSSION

An application for Medicaid benefits must have a valid signature, meaning the applicant must sign the application. *Medicaid Eligibility Handbook (MEH) §2.5.1* However, an applicant's guardian, authorized representative or power of attorney may sign the application on the applicant's behalf. (Id.)

If the application is signed by a power of attorney the agency must obtain a copy of the Durable Power of Attorney Document that designates the signer as power of attorney and the agency must read the document to verify that the power of attorney authority continues, notwithstanding any subsequent disability or incapacity of the applicant. *MEH §2.5.1*

In the case at hand, the agency needed to request verification of the power of attorney, by asking for the Durable Power of Attorney Documentation. However, the agency did not specifically request that documentation in the Notices of Action and Proof Needed that it sent on March 6 and 7, 2014. The agency only stated that it did not have the documents, so Petitioner would have to sign the application.

On March 19, 2014 the agency apparently sent a "free form" letter indicating that the trust documents submitted by Petitioner's son/POA were not sufficient, but it is again unclear whether the letter explicitly asked for the Durable Power of Attorney paperwork. Indeed, the agency did not provide a copy of the "free form letter". Even if the agency had requested the Durable Power of Attorney paperwork in the

“free form” letter, it did not give the Petitioner 10-days to provide the verification, before closing his case two days later on March 31, 2014. This is contrary to *MEH* §2.7.1 which states that an application may be closed for failure to provide verification, if the applicant had a minimum of 10 days to produce the verification.

Based upon all of the foregoing, it is found that the agency did not correctly deny Petitioner’s February 2014 application for Medicaid Benefits.

It should be noted that the Petitioner’s son did, at some point, provide the agency with the Durable Power of Attorney Paperwork, confirming his authority to execute health insurance documents on behalf of the Petitioner and that the agency has since determined the Petitioner eligible for benefits effective February 2013 forward. (Exhibits 9 and 10)

Given that the agency did not correctly deny Petitioner’s February application for benefits, the agency must make a determination concerning the Petitioner’s eligibility for benefits November 2013 forward.

If Petitioner disagrees with the agency’s determination concerning the three-month back date to November 2013 forward, the Petitioner will have to file a NEW appeal.

CONCLUSIONS OF LAW

The agency did not correctly deny the Petitioner’s February 2014 application for Medicaid benefits.

THEREFORE, it is

ORDERED

That the agency honor the February 2013 application and request for a three month back date, by determining the Petitioner’s eligibility for benefits for November 2013, December 2013 and January 2014. The agency shall issue to Petitioner/Petitioner’s POA notification of Petitioner’s eligibility for the previously stated months. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

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 11th day of July, 2014.

\sMayumi M. Ishii
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 11, 2014.

Racine County Department of Human Services
Division of Health Care Access and Accountability