



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/157292

PRELIMINARY RECITALS

Pursuant to a petition filed April 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 telephone hearing was held on June 03, 2014.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

Written Appearance by: Mary Chucka, OTR
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. On January 9, 2014, the petitioner along with her provider, [REDACTED] requested prior authorization for the purchase of a Drive shower commode chair. Exhibit 2.

3. On February 19, 2014, after receiving additional information at its request, the Division of Health Care Access and Accountability denied the request. The denial notified petitioner of the 45 day deadline to file an appeal of the determination, and specifically provided a deadline of April 5, 2014. Exhibit 2.
4. The petitioner appealed the modification via a Request for Fair Hearing postmarked April 28, 2014. Exhibit 1.

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 denied the petitioner's request for the purchase of a Drive shower commode chair. She appealed on April 28, 2014, or 68 days later. The petitioner testified that she was unable to recall why she waited to file the appeal, and noted that she had had surgery in January.

The respondent has not established that her surgery in January provided good cause for her failure to timely file her appeal. The January surgery would have taken place at least 3 months prior to the February 19th denial. The Division's letter modifying the request was sent to the petitioner's address and stated that any appeal must be filed by April 5, 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 her to state that she has been incorrectly denied. 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 21st day of July, 2014.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on July 21, 2014.

Division of Health Care Access and Accountability