



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/158230

PRELIMINARY RECITALS

Pursuant to a petition filed June 11, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support ["BLTS"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on November 12, 2014. At petitioner's request Hearings scheduled for October 16, 2014, September 16, 2014, and August 4, 2014 were rescheduled.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction in this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at
November 12, 2014 Hearing)
c/o [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED], petitioner's husband,
Legal Guardian & Medical Power of
Attorney [POA"]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Jody Brassfield, IRIS Section Supervisor
Department of Health Services
State of Wisconsin
IRIS Consultant Agency
Suite 320
1 South Pinckney Street
Madison, Wisconsin
53703-2887

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (56 years old) is a resident of Winnebago County, Wisconsin.
2. Petitioner receives benefits from the MA Include, Respect, I Self-Direct ["IRIS"] program.
3. Petitioner received a letter notice from the IRIS dated September 19, 2013 and entitled *Notice of Action*; that September 19, 2013 notice informed petitioner that effective November 1, 2013 her Self-Directed Personal Care ["SDPC"] program enrollment would be terminated; that September 19, 2013 notice also informed petitioner of her appeal rights, including the 45-day time limit for filing an appeal. Exhibit C.
4. Petitioner requested a Hearing by a *Request For A State Fair Hearing* -- IRIS form dated April 11, 2014 and received by DHA, via fax, on June 11, 2014 (attached to it was a letter dated June 11, 2014).

DISCUSSION

DHA can only hear cases on the merits if it has the legal authority to do so. This is called *jurisdiction*. There is no jurisdiction if an appeal is untimely.

An appeal concerning IRIS is untimely if it is not filed with DHA within 45 days after receipt of the notice of action. Wis. Stat. § 46.287(2)(a)1. (2011-12); Wis. Admin. Code § HA 3.05(3) (February 2013); See also, 42 C.F.R. § 438.408(f) & Wis. Admin. Code § DHS 10.55(3) (December 2013). A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the action being appealed is the September 19, 2013 notice informing petitioner that effective November 1, 2013 her SDPC program enrollment would be terminated.¹ Petitioner's request for a Hearing was not filed until June 11, 2013. See, Wis. Admin. Code § HA 3.05(3)(c) (February 2013). This is well outside of the allowable 45 days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner has wide-ranging, longstanding complaints concerning IRIS which, her husband states, have led to "a hostile working relationship between IRIS and me" However, those complaints are not of the type that can be addressed in the context of an Administrative Hearing.

¹ Even after termination of her SDPC enrollment petitioner is still receiving 26 hours per day of care funded by IRIS (this includes 2 hours of double coverage authorized to assist with medically necessary transfers).

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this matter.

NOW, THEREFORE, it is

ORDERED

That 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 17th day of November, 2014

\sSean P. Maloney
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 November 17, 2014.

Bureau of Long-Term Support