



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

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In the Matter of

[REDACTED]

DECISION

MPA/158366

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 12, 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 July 08, 2014, at Kenosha, Wisconsin.

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

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

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Respondent:

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

By: OIG by letter

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

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Kenosha County.
2. On March 13, 2014, Petitioner's dentist submitted a prior authorization request for dental bridge work, at a cost of \$2400.00. (Exhibit 3, pg. 7)

3. On March 25, 2014, the Department of Health Services (DHS) sent Petitioner's dentist a letter, with a PA error message, indicating that the x-ray films were too small to read, and that he needed to send larger films. In addition, it asked Petitioner's dentist to submit "Perio" charting. (Exhibit 3, pgs. 10-15)
4. On April 3, 2014, Petitioner's dentist faxed the "Perio" chart to DHS. (Exhibit 3, pgs. 16- 23)
5. On April 14, 2014, DHS sent to the Petitioner, at her guardian's address, a notice indicating that the requested dental services were denied. The notice indicated that the Petitioner had 45 days to appeal and that the appeal deadline was May 29, 2014. (Exhibit 3, pgs. 24-28; Testimony of Petitioner's guardian)
6. On April 14, 2014, DHS sent Petitioner's dentist notice of the same. (Exhibit 3, pgs. 29-31)
7. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals (post-marked) June 12, 2014. (Exhibit 1)

### **DISCUSSION**

A hearing officer 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 concerning medical assistance must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1.

In the case at hand, the date of negative action was April 14, 2014, when DHS notified the Petitioner that the request for dental services was denied. The petitioner's appeal was filed on June 12, 2014, 59 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

**Petitioner should note, however, that her dentist can file a new request for prior authorization of the requested service.**

Petitioner's guardian argued that the appeal should be considered timely, because a case worker in Kenosha erroneously told her that she could file the appeal within 60 days. However, this is an equitable argument that an administrative law judge is not allowed to consider. On the contrary, administrative law judges are required to follow the law as it is written.

### **CONCLUSIONS OF LAW**

There is no jurisdiction as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **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).

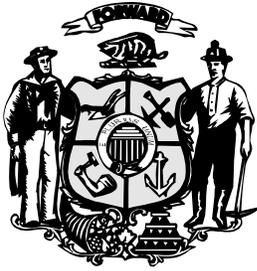
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 19th day of August, 2014.

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\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 August 19, 2014.

Division of Health Care Access and Accountability