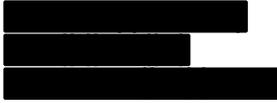




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

HMO/158519

PRELIMINARY RECITALS

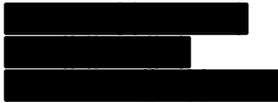
Pursuant to a petition filed June 19, 2014, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 17, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly reduced the Petitioner's personal care worker services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Liz Bartlett
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. Petitioner is 23 years old. His primary diagnosis is intellectual disability. Additional diagnoses include attention deficit disorder and psychosis.

2. On October 22, 2013, an assessment of the Petitioner was completed by Regal Home Health Services using the Personal Care Screening Tool (PCST). A request was submitted to the agency based on the PCST for 3.5 hours/day of personal care worker services.
3. On December 13, 2013, an independent in-home assessment of the Petitioner was performed by Horizon Home Care using the PCST. The assessor concluded the Petitioner requires 1.75 hours/day of PCW services.
4. On December 16, 2013, the agency issued a notice via certified and regular mail to the Petitioner's stepfather at [REDACTED], Milwaukee informing him that the agency approved 1.75 hours/day of PCW services for him. The notice also informed him of the right to appeal the agency determination by filing a request for a hearing within 45 days of the date of the notice to the Quality Improvement Specialist at iCare or to the Wisconsin Medicaid Program, Managed Care Ombudsman or to the Division of Hearings and Appeals. The notice states that the Petitioner has the right to appeal to any or all of the agencies.
5. On March 20, 2014, an appeal was filed with Wisconsin Medicaid. A decision was issued by that program on April 25, 2014 upholding the agency determination. No appeal was filed with iCare.
6. On June 19, 2014, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning Medicaid must be filed within 45 days of the date of the action. Wis. Stats. § 49.45(5).

In this case, the Petitioner's appeal was filed 185 days after the date of the notice of action. The appeal to Wisconsin Medicaid was not filed within the 45 day deadline. The Petitioner's appeal to DHA was also not filed within 45 days of the Wisconsin Medicaid decision.

The Petitioner's stepfather testified that he did not receive the December, 2013 notice from the agency. He concedes that the PO Box address used for the notice is a valid post office box and they do receive mail there. He testified that he was aware of not receiving some mail from Puerto Rico at the PO Box. He concedes he received the agency's exhibits for the hearing which were mailed to the PO Box. The Petitioner's mother testified that they became aware of the decreased hours when Regal Home Health advised them of the determination. They did not know when that occurred. Because there was an appeal filed with Wisconsin Medicaid in March, the Petitioner's representatives were aware of the determination by that point.

The agency testified that the notice mailed to the PO Box in December, 2013 was not returned to the agency as undeliverable.

Without more evidence, I must conclude that the Petitioner's representatives received the December, 2013 notice that was mailed to the PO Box. Thus, the appeal filed on June 19, 2014 is untimely and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal 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 2nd day of September, 2014

\sDebra Bursinger
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 September 2, 2014.

iCare
Division of Health Care Access and Accountability