



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/159325

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 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 [“DCHAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on October 16, 2014. At petitioner’s request a Hearing scheduled for September 16, 2014 was 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]
[REDACTED]
[REDACTED]

Respondent:

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

BY: Lora Wiggins, MD [Dr. Wiggins did not appear at the October 16, 2014
Hearing, but submitted a letter dated July 30, 2014 with an attachment.]
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 49 years old) is a resident of Columbia County, Wisconsin.
2. On February 26, 2014 petitioner's provider requested PA (P.A. # [REDACTED]; dated February 26, 2014) for MA coverage of Panniculectomy and Abdominoplasty for petitioner at a total cost of \$10,925.00.
3. On May 22, 2014 DCHAA denied PA # [REDACTED] for MA coverage of Panniculectomy and Abdominoplasty for petitioner; DHCAA sent petitioner a letter dated May 22, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial; that May 22nd letter explained petitioner's appeal rights and clearly set-out the appeal deadline, where an appeal request must be sent to, and the address of DHA to which an appeal must be mailed.
4. Petitioner's requested a Hearing by a *Request For Fair Hearing* form dated July 24, 2014 and received by DHA on July 25, 2014 via U.S. Mail postmarked July 24, 2014.

DISCUSSION

DHA has authority to hold a Hearing and make a decision only if the law provides for such authority. In legal language this authority is known as *jurisdiction*.

In order for DHA to have jurisdiction, an appeal of an action concerning MA, such as a denial of PA, must be made within 45 days of the effective date. Wis. Stat. § 49.45(5)(a) (2011-12); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (February 2013); see also, 42 C.F.R. § 431.221(d) (2012). A Hearing request that is not filed within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

A Hearing request is considered filed on the date of actual receipt by DHA or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c) (February 2013); See also, Wis. Admin. Code §§ HA 3.02(2) & 3.05(2)(a) (February 2013); and, Wis. Admin. Code § DHS 101.03(8) (December 2008). In this case the Hearing request was postmarked July 24, 2014. Thus, it is considered filed on July 24, 2014.

In this matter the effective date of the action was May 22, 2014 -- the date of the letter denying petitioner's request for PA. Forty-five days from May 22, 2014 is July 6, 2014. Petitioner's request for a Hearing was not filed until July 24, 2014. Thus, petitioner's request for a Hearing was not made within the allowed 45-day time period and DHA does not have jurisdiction.

Petitioner testified that she did not request a Hearing sooner because she had to get the form and because she had oral surgery. This is unfortunate, but it does not create jurisdiction where none otherwise exists.

CONCLUSIONS OF LAW

For the reasons stated 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 21st day of October, 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 October 21, 2014.

Division of Health Care Access and Accountability