



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/159573

PRELIMINARY RECITALS

Pursuant to a petition filed August 01, 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 September 16, 2014, at Kenosha, Wisconsin. On October 14, 2014, a decision was issued dismissing the appeal based on a finding that the Petitioner's appeal was untimely. On October 23, 2014, the Petitioner submitted a request for a rehearing with evidence, asserting the appeal was not untimely. On November 6, 2014, the request for rehearing was granted.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly denied the Petitioner's PA request for speech and language therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Theresa Walske

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. On February 13, 2014, the agency received PA # [REDACTED] requesting “oral function therapy” services for the Petitioner.
3. On April 11, 2014, the agency denied PA # [REDACTED]. The notice informed the Petitioner of the right to appeal the denial by filing a request for a hearing with the Division of Hearings and Appeals on or before May 26, 2014.
4. On May 15, 2014, the agency received PA # [REDACTED] requesting “therapeutic exercises”, “neuromuscular reeducation” and “gait training therapy” for the Petitioner.
5. On June 23, 2014, the agency denied PA # [REDACTED]. The notice informed the Petitioner of the right to appeal the denial by filing a request for a hearing with the Division of Hearings and Appeals on or before August 7, 2014.
6. On August 1, 2014, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals. The appeal letter from the Petitioner’s father states: “I would like to appeal the decision that [Petitioner] be denied Speech Therapy by [REDACTED] . . . The prior authorization # is [REDACTED] . . .”

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.

The Petitioner’s appeal letter and the testimony at the hearing by the Petitioner’s father and speech language therapist clearly indicate that the appeal was filed concerning the denial of speech language therapy. The original decision in this matter determined that appeal was untimely because it was not filed on or before May 26, 2014.

The Petitioner submitted a request for rehearing questioning the dismissal based on timeliness and attached a notice from the agency with an appeal deadline of August 7, 2014. The request for rehearing was granted to determine whether a mistake in law or fact had been made in the original decision.

Upon further investigation, it was determined that the denial letter informing the Petitioner of an August 7, 2014 appeal deadline relates to a different PA request. Specifically, PA # [REDACTED] relates to a request for physical therapy services. The denial letter from the agency dated June 23, 2014 specifically references physical therapy services. I note that the Petitioner’s appeal mistakenly references PA # [REDACTED] as the request for speech language therapy services. The PA request for speech language therapy services is # [REDACTED].

The Petitioner’s appeal was filed 112 days after the denial of speech language therapy services requested in PA # [REDACTED]. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I note that this decision does not prohibit the Petitioner from filing another PA request for speech language therapy services.

CONCLUSIONS OF LAW

The Petitioner’s appeal was 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 3rd day of December, 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 December 3, 2014.

Division of Health Care Access and Accountability