



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/159579

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 Barron County Department of Human Services in regard to Medical Assistance, a hearing was held on August 22, 2014, at Barron, Wisconsin.

The issue for determination is whether the petitioner’s appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

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Respondent:

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

By: No Appearance

Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) was a resident of the [REDACTED] [REDACTED] [REDACTED] Home in Barron County. She died on February 27, 2014.

2. The petitioner was eligible for medical assistance from November 30, 2012, through May 31, 2013.
3. The Great River Consortium sent a notice to the petitioner at the [REDACTED] Home on April 29, 2013, informing her that her institutional medical assistance would end on June 1, 2013, because she failed to verify assets.
4. The Great River Consortium sent a notice to the petitioner at the [REDACTED] Home on June 3, 2013, informing her that her institutional medical assistance would end on June 1, 2013, because she her assets exceeded the program's limit.
5. The petitioner was ineligible for medical assistance from June 1, 2013, through December 1, 2013.
6. The petitioner first filed an appeal on August 1, 2014.

DISCUSSION

Medical assistance applicants and recipients have 45 days from date an agency takes an adverse action to appeal. Wis. Admin. Code, § HA 3.05(3). Types of adverse actions include denial and termination of benefits. Wis. Admin. Code, § HA 3.03(1) and (3). If an appeal is late, the Division of Hearings and Appeals has no authority to consider it and must dismiss the matter. The petitioner entered a nursing home and began receiving medical assistance on November 30, 2012. The agency notified her on April 29, 2013, that her benefits would end on June 3, 2013, because she did not verify her assets. It sent another notice on June 3, 2013, denying her February 2013 application because it determined that her assets exceeded the program's limit. She regained her eligibility as of December 1, 2014. On February 27, 2014, she died. On August 1, 2014, her representatives filed an appeal requesting that she receive benefits for the months in December 2013 in which she was ineligible.

It is difficult to sort through what happened here because the agency worker did not appear and her summary letter was hard to follow. The petitioner's representatives testified that they never received notice that her benefits would end and did not find out about this until December 2013 when Medicaid did not pay a pharmacy bill. Now, the petitioner's nursing home bill is unpaid from September through November 2013.

Although I cannot tell what exactly happened, I do have the two notices from 2013 that affected her benefits. Both were sent to her at the nursing home. Nursing homes usually have social workers to help residents and their families with these types of matters, and they should have policies that increase the odds that letters from economic support agencies end up with persons who can respond to them. At the very least, they should have called the petitioner's representatives when medical assistance ended and they were not paid. The petitioner's representatives testified convincingly about problems they had with the CDPU. But the agency responsible for sending the two notices clearly sent them where they were told to send them and thus bear no responsibility for their not being read. The date to appeal the second of those notices was almost a year before any appeal was filed. I have no authority to consider those denials. When the petitioner was reinstated into Medicaid in December 2013, I assume the agency sent another benefit notice, although there is none in the file. Even if the petitioner's representatives did not receive this notice, they certainly were aware of it more than 45 days before they appealed on August 1, 2014, because they had been trying to get her benefits reinstated retroactive to September 1, 2013, long before then. I find that I have no authority to consider this decision either.

I note to the petitioner's representatives that unless they signed a contract with the nursing home making them liable for her debts, they are not personally responsible for those debts. The nursing home's only recourse is against the petitioner's estate and not against her representatives.

CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner's appeal because it is untimely.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 2nd day of October, 2014

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 2, 2014.

Barron County Department of Human Services
Division of Health Care Access and Accountability