



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MAP/159629

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Chippewa County Department of Human Services in regard to Medical Assistance, a hearing was held on September 16, 2014, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner filed his appeal on time.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Cindy Carlson

Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Chippewa County.
2. The petitioner applied for medical assistance through the Medicaid Purchase Plan on July 21, 2013, requesting benefits retroactive to April 1, 2013. It is unclear when, or if, that application was denied.

3. The petitioner reapplied for Medicaid Purchase Plan benefits on March 20, 2014. The county agency denied that application on April 14, 2014.
4. The petitioner appealed on August 7, 2014.

DISCUSSION

Medical assistance applicants must request a hearing within 45 days of the effective date of the agency's adverse action. Wis. Admin. Code, § HA 3.05(3). Adverse actions include the denial of an application and the "[f]ailure to act on an application with reasonable promptness." Wis. Admin. Code, § HA 3.03(1)(a) and (b). The agency must inform those affected by an adverse action of their right to a hearing in writing. Wis. Admin. Code, § HA 3.04. The petitioner applied for medical assistance through the Medicaid Purchase Plan on July 21, 2013. It is unclear when, or if, the agency denied that application. He reapplied for those benefits on March 20, 2014. The county agency denied that application in writing on April 14, 2014. He appealed on August 7, 2014.

When an appeal is late, the Division of Hearings and Appeals loses its legal authority to consider it. There is no jurisdiction to consider the denial of the second application because that denial was in writing and the appeal was filed 85 days later. The issue is whether the lack of proof that the agency denied the first application in writing allows the petitioner to appeal it. It does not because ultimately there was an adverse action, a notice explaining why he was ineligible for benefits and how he could appeal, and a failure to appeal within 45 days.

Assuming the agency never denied the petitioner's first application in writing, at some point its failure to act on the application was an adverse action. The date this occurred is not exactly clear, but he implicitly acknowledged that the agency acted contrary to his interests when he reapplied for identical benefits on March 20, 2014. When the agency denied his second application, it explained how to file an appeal, so if he was unaware of this process until then, he should have become aware at that point. Because this notice denied exactly the same benefits he had applied for earlier, it cures any harm he suffered if he did not receive a denial notice after his first application. If he disagreed with the denial and believed he was entitled to Medicaid Purchase Plan benefits, whether through the July 21, 2013, or the March 20, 2014, application, he had to appeal by May 30, 2014, as the denial notice stated. If he had done so, he could have then raised the alleged earlier lack of denial when he argued how far his benefits could go back (assuming that the Division of Hearings and Appeals determined he was entitled to benefits). When he did not do so, the Division of Hearings and Appeals lost its jurisdiction to consider the matter entirely.

CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner's appeal, whether based upon his July 21, 2013, or his March 20, 2014, application, 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 14th day of October, 2014

\sMichael D. O'Brien
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 14, 2014.

Chippewa County Department of Human Services
Division of Health Care Access and Accountability
avang@cardonoutreach.com