



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/159706

PRELIMINARY RECITALS

Pursuant to a petition filed August 08, 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 October 01, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the appeal is timely.

There appeared at that time and place 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: Robert Derendinger, RN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's provider filed a PA request (# [REDACTED]) for personal care worker services at a level of 30 hours per week.
3. The Department modified the PA request to approve 7 hours per week.

4. Petitioner appealed.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning Medical Assistance must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); *Income Maintenance Manual* § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed more than 45 days after the date of the April 16, 2014 notification of the action to deny the authorization request. The deadline was May 31, 2014 and the request for hearing was received at DHA on August 8, 2014. Ultimately, she waited too long. The request for hearing was untimely, and no jurisdiction exists for considering the merits of the case.

However, even if this appeal were timely, petitioner would not prevail. It is petitioner's burden to establish the necessity of the requested time. At the time of hearing, petitioner did not argue for thirty hours as the initial PA request sought. Petitioner stated that nine hours per week is enough. But, even this statement was without support. The determination by the provider is clearly erroneous given the Department's determination and petitioner concession that nine hours would be adequate. But, I cannot grant even nine hours based only on petitioner's estimation that this would be appropriate. The Department's analysis of petitioner's needs is the most thorough and credible determination in the record. The rest seem arbitrary at best and, in the case of the provider's initial request, simply off the mark entirely.

Petitioner may file a new PA request for future services with new support and documentation if she requires more than what has been approved.

CONCLUSIONS OF LAW

The request for hearing was untimely and DHA does not have jurisdiction to consider the merits of the denial.

THEREFORE, it is

ORDERED

That this 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 23rd day of October, 2014

\sJohn P. Tedesco
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 23, 2014.

Division of Health Care Access and Accountability