



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/160170

PRELIMINARY RECITALS

Pursuant to a petition filed August 26, 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 (DHCAA or Division) in regard to Medical Assistance (MA)/BadgerCare Plus, a hearing was held on October 7, 2014, by telephone.

The issues for determination are (1) whether petitioner's appeal was timely filed, and (2) whether the Division correctly denied a prior authorization request for laparoscopic gastric bypass surgery.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Ms. [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By written submission of Lora Wiggins, M.D.
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Price County. She is certified for MA or BadgerCare Plus.

2. A prior authorization request for gastric bypass surgery was submitted on the petitioner's behalf on June 24, 2014. On *July 7, 2014*, the Division issued written notice of the denial of the request (negative action).
3. The Division's basis for denial was that the petitioner did not have a co-morbid medical condition that was refractory to treatment.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on *August 26, 2014*.

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 by a county agency concerning MA must be filed within **45** days of the date of the action. Wis. Stat. § 49.45(5); *Income Maintenance Manual*_§ 3.3.1. A negative action can be the denial of an application, denial of a prior authorization request, or the reduction or termination of an ongoing case. The petitioner's appeal was filed *50* days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

This Judge apologizes to the petitioner for not noticing at the time of hearing that this hearing request was late; the Judge was focused on the petitioner's testimony. This Decision does not preclude the petitioner from asking her provider to submit a new prior authorization request to the Department. If such a future request is again denied, the petitioner has the right to timely request another hearing on such a denial.

CONCLUSIONS OF LAW

The petitioner's hearing request was filed late; this Judge has no jurisdiction to consider the merits of her appeal.

THEREFORE, it is

ORDERED

That the petition 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 19th day of November, 2014

\sNancy J. Gagnon
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 November 19, 2014.

Division of Health Care Access and Accountability