



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/160214

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 23, 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 09, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly modified the Petitioner's PA request for personal care worker (PCW) hours.

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: Sharon Beck

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 (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's provider submitted a PA request on Petitioner's behalf on June 18, 2014 for 22.75 hours/week of PCW services.

3. On July 3, 2014, the agency issued a notice to the Petitioner informing him that the agency had modified his request, approving 7 hours/week of PCW services. The notice also informed the Petitioner of the right to a hearing by filing an appeal with the Division of Hearings and Appeals by August 17, 2014.
4. On August 23, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **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 an action by an agency concerning MA must be filed within 45 days of the date of the action. Wis. Stats., § 49.45(5). The Petitioner's appeal was filed 51 days after the date of the action. At the hearing, the Petitioner testified that his medical condition prevented him from filing the appeal by the deadline. The Petitioner was in and out of the hospital during that period of time but was never hospitalized as an in-patient. He did not present any additional information to indicate why the appeal letter could not have been mailed timely. Thus, I must conclude that the appeal was untimely, and no jurisdiction exists for considering the merits of the case.

This decision does not prohibit the Petitioner from filing other PA requests for consideration.

### **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 28th day of October, 2014

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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5005 University Avenue  
Madison, WI 53705-5400

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The preceding decision was sent to the following parties on October 28, 2014.

Division of Health Care Access and Accountability