



FH  
[REDACTED]

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

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/161008

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 30, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Jefferson County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on November 19, 2014.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to hear the merits of this matter.

There appeared at that time via telephone 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: Michael Last, ESS

Jefferson County Department of Human Services  
Workforce Development Center  
874 Collins Rd.  
Jefferson, WI 53549

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County, Wisconsin.

2. Petitioner received a notice dated May 8, 2012 and entitled *About Your Benefits*; that notice informed petitioner that her application for MA was approved for the time period December 12, 2011 to April 20, 2012; the notice also informed petitioner of her appeal rights and of the process for requesting a Hearing, including the time limit for requesting a Hearing.
3. Petitioner did not request a Hearing concerning the denial of her MA application until September 30, 2014; her request for a Hearing was made by way of a *Request For Fair Hearing* form dated September 25, 2014 and received by DHA on October 2, 2014 via U.S. Mail postmarked September 30, 2014.

### **DISCUSSION**

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning MA is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d) (2012); Wis. Stat. § 49.45(5)(a) (2011-12); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (February 2013); *BadgerCare Plus Eligibility Handbook* [“BC+ Handbook”] 29.2.; *Income Maintenance Manual* [“IMM”] 3.3.2. A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

Petitioner is appealing because MA was approved for the time period December 12, 2011 to April 20, 2012 and she is seeking MA coverage for August 2011. In this case, the action being appealed is the May 8, 2012 *About Your Benefits* notice that informed petitioner that her application for MA was approved for the time period December 12, 2011 to April 20, 2012 (but not for August 2011). Petitioner's request for a Hearing was not filed until September 30, 2014. See, Wis. Admin. Code §§ HA 3.05(2)(a) & 3.05(3)(c) (February 2013). This is well outside of the allowable 45 days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner testified that she did not request a Hearing sooner because the hospital told her that MA coverage would go back for 6 months and because she was trying to reconcile things with the hospital. Petitioner's daughter-in-law testified that petitioner was exceptionally depressed and “not on top of things.” These circumstances are unfortunate, but do not create jurisdiction where none otherwise exists.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, DHA does not have jurisdiction in this matter.

**NOW, THEREFORE, it is**

### **ORDERED**

That the petition for review herein be and the same is hereby 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 December, 2014

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\sSean P. Maloney  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

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

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