



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWK/161018

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Lutheran Social Services of Wisconsin & Upper Michigan in regard to Medical Assistance, a telephonic hearing was held on November 05, 2014.

The issue for determination is whether petitioner's appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Danielle Johnson

Lutheran Social Services of Wisconsin & Upper Michigan
CLTS Program Manager
3003 N. Richmond St.
Appleton, WI 53217

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Outagamie County.
2. On or about March 3, 2014, petitioner applied for the Children's Long-Term Support Waiver Home and Community-Based Services Waiver for Intensive In-Home Autism Treatment Services through Lutheran Social Services. Exhibit 2.

3. On April 3, 2014, the respondent sent a Notice of Decision to the petitioner stating that the respondent had denied the application due to its determination that petitioner did not meet the level of care required for program eligibility. Exhibit 2. The petitioner received the Notice of Decision.
4. The petitioner submitted an appeal of the April, 2014, denial on September 18, 2014.

DISCUSSION

An administrative law judge (ALJ) or 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 Medical Assistance (MA) must be filed within 45 days of the date of the action. Wis. Stat. §§ 49.45(5) and 49.50(8); Income Maintenance Manual, II-G-3.4.0.** A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the respondent's April 3, 2014, Notice of Decision to the petitioner stating that the respondent had denied the application due to its determination that petitioner did not meet the level of care required for program eligibility. See, Exhibit 2.

At hearing, petitioner's mother conceded that petitioner received the April 3, 2014, Notice of Action. When asked by this administrative law judge (ALJ) why petitioner or his representatives waited more than five months to submit petitioner's appeal to the Division of Hearings and Appeals (DHA), petitioner's representatives were unable to establish any legal good cause. There was no evidence of any attempt to prevent the petitioner from filing a timely appeal at DHA.

Petitioner's parents testified that they were not able to file an appeal during the 45 day period after receiving the April 3, 2014, notice due to the fact that petitioner's mother was experiencing a difficult pregnancy at that time, and gave birth via c-section on June 21, 2014. While I can understand the stress that pregnancy complications entail, I am unable to conclude that the petitioner has succeeded in providing any valid reason or good cause for not filing an appeal with DHA during the 45 day period after receiving the April 3, 2014, notice. Even if I were to conclude that the pregnancy complications constituted good cause for failure to file an appeal during petitioner's mother's pregnancy, and even if I were to extend that "good cause" period to the beginning of July (after the baby was born and brought home), there was still a substantial delay in filing. 79 days transpired between July 1, 2014 and the appeal filing on September 18, 2014.

Accordingly, for the above reasons, I conclude that because petitioner did not appeal the respondent's denial of petitioner's MA application within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the petitioner's eligibility for the Children's Long-Term Support Waiver Home and Community-Based Services Waiver for Intensive In-Home Autism Treatment Services.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction to address the petitioner's eligibility for the Children's Long-Term Support Waiver Home and Community-Based Services Waiver for Intensive In-Home Autism Treatment Services, as the petitioner's September 18, 2014, appeal is untimely.

THEREFORE, it is ORDERED

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 3rd day of December, 2014.

\sPeter McCombs
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 December 3, 2014.

Lutheran Social Services of Wisconsin & Upper Michigan
Bureau of Long-Term Support