



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]
[Redacted]

DECISION

MPA/161081

PRELIMINARY RECITALS

Pursuant to a petition filed October 03, 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 24, 2014, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner’s appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]
[Redacted]

Respondent:

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

By: Theresa Walske
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Chippewa County.
2. The petitioner was evaluated for speech therapy by [Redacted] on May 22, 2014; [Redacted] issued an evaluation report on June 9, 2014.

3. The petitioner initially requested authorization for the evaluation around when it was performed. The Office of Inspector General denied this request on July 28, 2014, and informed the petitioner that she must file any appeal of that denial by September 11, 2014. She filed the current request on August 15, 2014.
4. The Division of Hearings and Appeals dismissed the petitioner's appeal of the earlier denial on December 10, 2014, because it was late. *DHA Decision No. MPA/160986*.

DISCUSSION

The petitioner initially sought authorization for the speech evaluation last summer; the exact date is unclear because the request is not included in this file. The Office of Inspector General denied the request on July 28, 2014, and informed her that she must file any appeal of that denial by September 11, 2014. She did not appeal that decision within 45 days, but her provider resubmitted the request on August 15, 2014, asking that the Office reconsider its decision.

The evaluation was performed on May 22, 2014, and the report was issued on June 9, 2014. Thus, this request was for an evaluation that was already denied and not appealed within 45 days as required by Wis. Admin. Code § HA 3.05(3). The petitioner cannot resurrect a late request merely by resubmitting it; if she could, the 45-day deadline would be meaningless. Furthermore, a provider must request services before performing them. Wis. Admin. Code, § DHS 107.02(3)(c). This rule is not absolute: The Office will sometimes allow up to two weeks delay where time is of the essence. But the second request was submitted nearly three months after the evaluation was performed and more than two months after the evaluation report was completed.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals cannot consider the petitioner's appeal because she had an earlier opportunity to appeal and did not do so on time.

THEREFORE, it is

ORDERED

The petitioner's 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 10th day of December, 2014

\sMichael D. O'Brien
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 10, 2014.

Division of Health Care Access and Accountability