



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

MPA/161113

PRELIMINARY RECITALS

Pursuant to a petition filed October 6, 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), a hearing was held on October 29, 2014. At the petitioner's request, the record was held open for seven days for document submission; a submission was received.

The issues for determination are (1) whether petitioner's appeal was timely filed and (2) whether the Division correctly approved the petitioner's prior authorization request for PCW services at the level of 10.5 hours weekly.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

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

By written submission of Robert Derendinger, RN BSN
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 (CARES # Redact) is a resident of Milwaukee County. He is certified for MA.
2. In May, 2014, a prior authorization request (#...Red...) was submitted on the petitioner's behalf for **42.0** hours weekly of PCW services, beginning May 6, 2014. On August 11, 2014, the Division issued written notice that it was "modifying" the request by approving PCW time of 10.5 hours weekly.
3. The Division's basis for service denial was that the number of requested hours was not medically necessary.
4. The petitioner, age 16, resides with his family in the community. His caregiver (sister) does not reside with him. The petitioner has diagnoses of schizophrenia, mental retardation, incontinence and keloid lesions on the scalp. He has functional limitations in the areas of incontinence and ambulation.

A state Personal Care Screening Tool (PCST) review was performed by a nurse for the petitioner in May 2014. The PCST program concluded that the petitioner requires 42.0 hours of PCW care weekly. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, upper and lower body dressing daily, grooming twice daily, incontinence care four times daily, transfers, and medication administration. He feeds himself (supervision advisable, due to poor judgment). The petitioner takes oral medications and requires application of medication to his scalp twice daily.

5. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on October 6, 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. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed *56* days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

If the petitioner's provider files a new or amended prior authorization request seeking more hours, and if the request is not fully granted, the petitioner is free to file a new appeal within the 45 day period following such a new denial.

CONCLUSIONS OF LAW

There is no jurisdiction because the appeal was untimely filed.

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 23rd day of December, 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 December 23, 2014.

Division of Health Care Access and Accountability