



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
Redact

DECISION

MPA/161242

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 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 telephone hearing was held on November 11, 2014.

There is no issue for determination.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
Redact

Respondent:

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

By: Marcie Oakes, RN

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

DISCUSSION

Petitioner filed a request for Fair Hearing, asserting that she needed more personal care worker (PCW) hours than she received. The respondent submitted a letter prior to the hearing date indicating that a prior authorization for PCW services was approved for petitioner as requested. There was no modification or denial of requested PCW services.

The Division of Hearings and Appeals has jurisdiction to hear appeals only in defined situations. Wis. Admin. Code § HA 3.03 provides as follows:

Right to appeal.

(1) Any person applying for or receiving medicaid, food stamps, social services or public assistance may appeal any of the following administrative actions of the department or an agency:

- (a) Denial of an application for benefits or the overt denial of the right to apply.
- (b) Failure to act on an application with reasonable promptness.
- (c) Reduction, suspension or termination of program benefits.
- (d) The determination of the amount, sufficiency, initial eligibility date of program benefits excluding COP program benefits.
- (e) A change in the form of payment of benefits.
- (f) For the COP program and medicaid waiver services, the denial of eligibility for services or reduction or termination of services as provided in s. 46.27 (7m), Stats.
- (g) A determination with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Social Security Act of 1935, as amended.
- (h) A decision to transfer or discharge a resident from a facility subject to the requirements of 42 CFR 483.12.
- (i) A denial or termination of eligibility for medicaid under the Katie Beckett waiver program under section 1902(e)(3) of the Social Security Act.
- (j) A decision to impose a medicaid lien or to deny a hardship waiver under s. 49.496, Stats.
- (k) Any other decision or action affecting a medicaid applicant or enrollee where a hearing is required by law.
- (L) A decision to deny a hardship waiver under s. 49.682 (5), Stats., with regard to the recovery of benefits under a chronic disease program.
- (m) The determination under s. 49.85, Stats., to recover an overpayment of benefits by means of certification to the Wisconsin department of revenue and the determination of the amount of such an overpayment as including an amount they believe has already been repaid or discharged in bankruptcy.
- (n) A denial of an application for kinship care payment on the grounds specified in s. 48.57 (3m) (am) 1., 2., 4., 4m. and 5., Stats., or the termination of kinship care payments.
- (o) Removal of a child or any other decision or order by an agency or department that affects the head of a foster, treatment foster or group home or the children involved, per s. 48.64 (4), Stats.

(2) An applicant for or recipient of medicaid may appeal a decision or order of a managed care entity which denies, reduces, terminates or otherwise limits services, which denies an enrollee's request for disenrollment or exemption from the entity or which otherwise adversely affects the individual.

(3) A former recipient of medicaid, food stamps, aid to families with dependent children or W-2 may appeal the determination that he or she has been overpaid benefits, the amount of such an overpayment still owing or whether it has been discharged in bankruptcy or the determination under s. 49.85, Stats., to recover such an overpayment by means of certification to the Wisconsin department of revenue.

(4) An applicant, recipient or former recipient may appeal any other adverse action or decision by an agency or department which affects their public assistance or social services benefits where a hearing is required by state or federal law or department policy.

The respondent has not identified a negative action by the respondent that would provide the Division with jurisdiction to review. As such, there is no issue for determination, and petitioner's appeal must be dismissed.

Petitioner was advised to contact her provider to discuss her concerns regarding the number of PCW services that were requested.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no jurisdiction to hear petitioner's appeal because there has been no negative action taken by the respondent.

THEREFORE, it is ORDERED

That 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 23rd day of December, 2014.

\sPeter McCombs
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 23, 2014.

Division of Health Care Access and Accountability