



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed December 9, 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 ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on February 19, 2015. At petitioner's request a Hearing scheduled for January 22, 2015 was rescheduled.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction in 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: Lora Wiggins, MD, Chief Medical Officer
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

[REDACTED]

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED] County, Wisconsin.
2. Petitioner's provider, [REDACTED], filed PA ([REDACTED] dated October 14, 2014) with DCHAA requesting MA payment for Laparoscopic Sleeve Gastrectomy at a total cost of \$8,059.00.
3. DCHAA denied [REDACTED]; DCHAA sent a letter to petitioner dated October 23, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of the denial; that October 23rd letter explained petitioner's appeal rights and clearly set-out the appeal deadline, where an appeal request must be sent to, and the address of DHA to which an appeal must be mailed.
4. Petitioner's requested a Hearing by a letter dated November 20, 2014 and received by DHA on December 11, 2014 via U.S. Mail postmarked December 9, 2014.

DISCUSSION

DHA has authority to hold a Hearing and make a decision only if the law provides for such authority. In legal language this authority is known as *jurisdiction*.

In order for DHA to have jurisdiction, an appeal of an action concerning MA, such as a denial of PA, must be made within 45 days of the effective date. Wis. Stat. § 49.45(5)(a) (2013-14); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (February 2013); see also, 42 C.F.R. § 431.221(d) (2015). A Hearing request that is not filed within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

A Hearing request is considered filed on the date of actual receipt by DHA or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c) (February 2013); See also, Wis. Admin. Code §§ HA 3.02(2) & 3.05(2)(a) (February 2013); and, Wis. Admin. Code § DHS 101.03(8) (December 2008). In this case the Hearing request was postmarked December 9, 2014. Thus, it is considered filed on December 9, 2014.

In this matter the effective date of the action was October 23, 2014 -- the date of the letter denying petitioner's request for PA. Forty-five days from October 23, 2014 was December 7, 2014. Petitioner's request for a Hearing was not filed until December 9, 2014. Thus, petitioner's request for a Hearing was not made within the allowed 45-day time period and DHA does not have jurisdiction.

CONCLUSIONS OF LAW

For the reasons stated 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 13th day of March, 2015

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

The preceding decision was sent to the following parties on March 13, 2015.

Division of Health Care Access and Accountability