



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

FCP/162745

PRELIMINARY RECITALS

Pursuant to a petition filed December 18, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 06, 2015, at Milwaukee, Wisconsin.

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 petitioner name

Respondent:

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

By: Redacted

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Milwaukee County.
2. Petitioner was found eligible for home based FCP on May 6, 2014. Eligibility was conditioned upon a cost share of \$2,311.69. See, Exhibit R-6.
3. Petitioner's monthly income is \$1,183.

4. On or about August 18, 2014, petitioner signed and submitted a Family Care disenrollment request. Exhibit R-7. By notice dated August 22, 2014, the respondent acknowledged petitioner's disenrollment request and indicated that her Family Care enrollment would cease as of October 1, 2014. That notice indicated a deadline of October 17, 2014, to request a hearing. Exhibit R-8.
5. On December 18, 2014, a Request for State Fair Hearing was faxed to the Division of Hearings and Appeals, and this appeal file was opened.

DISCUSSION

The Family Care Program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

An FCP recipient can appeal a cost share determination. Wis. Adm. Code, §DHS 10.55(1)(b). The right to appeal is limited as follows:

A client shall request a fair hearing within 45 days after receipt of notice of a decision in a contested matter, or after a resource center or CMO has failed to respond within timeframes specified by this chapter or the department. Receipt of notice is presumed within 5 days of the date the notice was mailed. A client shall file his or her request for a fair hearing in writing with the division of hearings and appeals in the department of administration. *A hearing request shall be considered filed on the date of actual receipt by the division of hearings and appeals, or the date of the postmark, whichever is earlier. A request filed by facsimile is complete upon transmission.* If the request is filed by facsimile transmission and such transmission is completed between 5 p.m. and midnight, one day shall be added to the prescribed period. If a client asks the department, a county agency, a resource center or CMO for assistance in writing a fair hearing request, the department, resource center or CMO shall provide that assistance.

Id. (emphasis added). The petitioner filed her appeal 62 days following the 45 day deadline specified in her August 22, 2014, notice. When questioned on this at hearing, petitioner's daughter explained that petitioner was confused and she (petitioner's daughter) was unaware of the deadline. While I certainly empathize with petitioner, there is no assertion that the August 22, 2014, notice was not received, nor has the petitioner presented any other good cause for the failure to comply with the mandatory filing deadline. I thus conclude that petitioner's appeal of the cost shares issue is untimely, and the Division of Hearings and Appeals lacks jurisdiction to address the issue.

CONCLUSIONS OF LAW

Petitioner's appeal of her cost share determination was filed untimely.

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 28th day of January, 2015.

\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 January 28, 2015.

Milwaukee Enrollment Services
Office of Family Care Expansion