



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/163008

PRELIMINARY RECITALS

Pursuant to a petition filed December 30, 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 January 29, 2015.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Mary Chucka, OTR (written appearance)
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

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On January 24, 2014, the petitioner along with his provider, [REDACTED], requested Prior Authorization (PA) no. [REDACTED], regarding physical therapy.

3. On October 30, 2014, the respondent issued a notice to petitioner indicating that it had denied the PA request. The notice specified that petitioner could appeal from the modification, and that any such appeal would need to be filed within 45 days. The notice specifically indicated that an appeal needed to be received by December 14, 2014.
4. The petitioner appealed the modification via a Request for Hearing postmarked December 30, 2014, and received on January 2, 2015.

DISCUSSION

Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. The Division of Health Care Access and Accountability denied the petitioner's request for physical therapy on October 30, 2014.

The respondent's letter modifying the request was sent to the petitioner's address and stated that any appeal must be filed by December 14, 2014. That letter indicated that the letter must include "[t]he reason you think the denial or modification of the prior authorization is wrong" and further cautioned that "[y]ou will lose your right to an appeal" if it is late. At hearing petitioner's mother testified that she was ill and missed work between October and December of 2014. She stated that she is the sole care provider for petitioner and her 11 year old daughter. While I empathize with her situation, I cannot conclude that she has established good cause for failing to comply with the filing deadline.

Petitioner's mother should be aware that this Decision does not prevent her from seeking a new prior authorization. She is encouraged to pursue such action along with a showing by her son's provider that the therapy is medically necessary. However, because this appeal is late, I have no jurisdiction to consider it and must dismiss it.

CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner's appeal because it is untimely.

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 20th day of March, 2015.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on March 20, 2015.

Division of Health Care Access and Accountability