



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 June 04, 2015, 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 July 22, 2015. The record was held open to allow petitioner time to provide further medical documentation verifying her diagnosis of rheumatoid arthritis. Petitioner was unable to obtain such documentation while the record was held open.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Marilyn Feil
2865 N Sherman Ave
Madison, WI 53704

Respondent:

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

By: [REDACTED] (written appearance only)
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 (CARES # [REDACTED]) is a resident of Dane County.

2. On or about February 12, 2015, the petitioner along with her provider, UW Health Outpatient Pharmacy, requested Prior Authorization (PA) no. [REDACTED] requesting coverage for the prescription drug Humira. Exhibit 2.
3. On February 25, 2015, 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 would need to be received by April 11, 2015. Exhibit 2.
4. The petitioner appealed the modification via a Request for Hearing sent by facsimile on June 4, 2015. Exhibit 1.

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 Humira on February 25, 2015.

The respondent's letter modifying the request was sent to the petitioner's address and stated that any appeal must be filed by April 11, 2015. 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. Because the appeal is late, I have no jurisdiction to consider it and must dismiss it.

As noted in the Preliminary Recitals, above, the petitioner contends that she has been diagnosed with rheumatoid arthritis, which would arguably allow for approval of her request. The respondent, in its written statement, confirmed that a previous prior authorization request did indeed identify such a diagnosis for petitioner. It is unclear why the instant request did not identify this diagnosis, and it is further unclear why petitioner's provider was unable to provide documentation of this diagnosis post-hearing. I note to the petitioner that the dismissal of this appeal does not preclude her from requesting a new prior authorization with documentation establishing her rheumatoid arthritis diagnosis.

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 18th day of August, 2015

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



[REDACTED]

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 18, 2015.

Division of Health Care Access and Accountability

