



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/167040

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 30, 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 hearing was held on July 30, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's prior authorization request for physical therapy (PT) services from two times per week to one time per week.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Kristen Derenne

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

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Waukesha County.

2. On March 16, 2015 the petitioner's provider, [REDACTED], submitted a prior authorization request for Physical Therapy (PT) services two times per week.
3. On March 31, 2015 the Department sent the petitioner a notice stating they had modified the prior authorization request only allowing one PT service per week. The notice stated that the petitioner had 45 days to appeal the modification.
4. On June 3, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.
5. The petitioner is a six year old girl suffering from cerebral palsy and congenital deplegia. When in school the petitioner receives PT services through her Individualized Education Plan (IEP) one time per week.

### DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning MA must be filed within 45 days of the date of the action. Wis. Stat. § 49.45(5) and 49.21(1). A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 64 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The petitioner was only contesting PT services in the summer months when she is not attending school. PT services are not at issue when she is attending school because she receives PT services through her IEP one time per week. This decision is being issued in August. The petitioner will soon be returning to school. As a practical matter, the lateness of the petitioner's request for fair hearing has more or less made this issue moot. By the time the petitioner would receive my decision, get the decision to the provider, and the provider implement the PT services, the petitioner may have already returned to school. If not it is a very short time period that is still at issue. Regardless, I do not have jurisdiction to decide the medical necessity of the requested PT services.

### CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition 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 Milwaukee,  
Wisconsin, this 6th day of August, 2015

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\sCorinne Balter  
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 August 6, 2015.

Division of Health Care Access and Accountability