



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed July 22, 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 telephonic hearing was held on September 01, 2015, at Janesville, Wisconsin.

The issue for determination is whether the petitioner’s appeal of the denial of her prior authorization (PA) request for the drug, Harvoni, is timely for jurisdictional purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: [REDACTED], R.Ph., pharmacy consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Rock County who is certified for MA.
2. Petitioner's pharmacy provider, Avella of Deer Valley in Phoenix, Arizona, submitted a prior authorization (PA) request on or about May 7, 2015 to the Department on behalf of the petitioner for the drug, Harvoni at a requested cost of \$119,108.85. Exhibit 2.

- [REDACTED]
3. The Department sent a May 13, 2015 notice to the petitioner at her correct address stating that her PA request for the drug, Harvoni was denied. That notice stated specifically that there was a 45-day time limit for any appeal based upon the May 13, 2015 denial notice of her Harvoni request, and indicated that the deadline for filing the appeal at the Division of Hearings and Appeals (DHA) was June 27, 2015. Exhibit 2. The petitioner did not dispute that she received the May 13, 2015 denial notice.
 4. The petitioner's appeal of the Harvoni denial was dated July 21, 2015, mailed on July 21, 2015, and that appeal was received at the Division of Hearings and Appeals (DHA) on July 22, 2015. Exhibit 1.
 5. The petitioner was unable to establish that she submitted any appeal of her denial of Harvoni prior to her appeal on July 21, 2015 and the receipt of that appeal at DHA on July 22, 2015.

DISCUSSION

An Administrative Law Judge (ALJ) 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 by a county agency concerning MA must be filed within 45 days of the date of the action.** Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). A negative action can be the denial or modification of an application or prior authorization request, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the May 13, 2015 notice to the petitioner stating that her PA request for the drug, Harvoni, was denied. See Exhibit 2. The petitioner's appeal was dated and mailed at the US post office on July 21, 2015, and was received at the DHA on July 22, 2015, which is after the 45-day deadline (June 27, 2015).

During the September 1, 2015 hearing, the petitioner did not dispute that she timely received the Department's denial letter of May 13, 2015 denying the petitioner's PA request for Harvoni. The petitioner just wanted to explain that she was confused, and misunderstood that it was her responsibility to submit the Harvoni appeal to DHA. However, such excuse does not establish any good cause for why she delayed until July 21, 2015 to submit her appeal to DHA. Therefore, based upon the hearing record, the petitioner's appeal was filed more than 45 days after the May 13, 2015 negative notice which informed petitioner that her prior authorization for Harvoni was denied. Accordingly, I must conclude that because petitioner did not appeal the prior authorization denial within the 45-day time limit, the Division of Hearings and Appeals has no jurisdiction in this case.

CONCLUSIONS OF LAW

There is no jurisdiction regarding the petitioner's appeal of the May 13, 2015 prior authorization denial of her request for the drug, Harvoni, as the appeal was untimely.

THEREFORE, it is

ORDERED

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 19th day of October, 2015

\sGary M. Wolkstein
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 October 19, 2015.

Division of Health Care Access and Accountability