



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/167537

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 23, 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. Petitioner failed to appear for a telephone hearing originally scheduled for September 8, 2015; she timely submitted a Request for Rehearing, and a telephone hearing was subsequently held on October 07, 2015.

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]

Respondent:

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

By: Marcie Oakes, RN (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 Rock County.

2. On April 27, 2015, the petitioner along with her provider, Dr. Nader Honarkhah, requested Prior Authorization (PA) no. [REDACTED], regarding an MRI Cervical Spine (spinal canal and contents) with contrast. Exhibit 3.
3. On April 28, 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 denial, and that any such appeal would need to be filed within 45 days. The notice specifically indicated that an appeal need to be received by June 10, 2015. Exhibit 3.
4. The petitioner appealed the modification via a Request for Hearing postmarked July 23, 2015, and received on July 27, 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 an MRI Cervical Spine (spinal canal and contents) with contrast on April 28, 2015.

The respondent's letter modifying the request was sent to the petitioner's address and stated that any appeal must be filed by July 23, 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.

The petitioner testified at hearing that she was confused about the denial, and thought that it pertained to a lapse in insurance. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, her appeal was untimely; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

### 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**

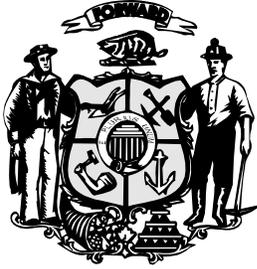
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 23rd day of October, 2015

---

\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 23, 2015.

Division of Health Care Access and Accountability