



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/168551

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 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 hearing was held on October 06, 2015, at Racine, Wisconsin.

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]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Sharon Beck, RN

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

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. A prior authorization (PA) request seeking Medicaid payment for 29.75 hours (or 119 units with each unit = 15 minutes) per week of personal care worker (PCW) services plus one hour per day (28 units per week) for travel was filed on behalf of Petitioner on or about May 28, 2015.

3. The prior authorization was approved in part. 17 hours per week were approved as was the travel time for the care worker.
4. The notice indicating the Department's disposition of this PA is dated June 23, 2015 and states that the appeal deadline is August 7, 2015 – a Friday. That notice was sent to Petitioner at the above address. This appeal was filed with the Division of Hearings and Appeals on Thursday, September 3, 2015 – this is the postmark date.

### DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medicaid matters must be filed within 45 days of the notice of the agency decision. §49.45(5)(a), Wis. Stats.

The appeal deadline time limit for this case was August 7, 2015. It was noted to be received on the postmark date which was September 3, 2015. As the appeal was filed the appeal deadline, the Division of Hearings and Appeals no longer has authority to make a determination on the merits of this matter.

I do note that the provider filed an amendment seeking additional time but the Department requested documentation from the provider with no response so that request is no longer active. Because this is untimely, I am not approving any additional PCW time but will note that Petitioner may always contact the provider and ask that it request additional time if it can document the need for those additional services. Of particular concern should be Petitioner's glaucoma and the fact that his family is not able to see him every day.

Further, Petitioner may contact the Racine County Aging and Disability Resource Center for information about other programs that may be of help to Petitioner. That contact information is:

**Aging & Disability Resource Center (ADRC) of Racine County** [REDACTED]

[REDACTED] Toll Free

WI Relay 711

Email: [REDACTED]

**Finally, I note for Petitioner that her provider will not receive a copy of this Decision; but Petitioner may provide a copy to the provider if she wants them to have it.**

### CONCLUSIONS OF LAW

That this appeal is untimely and the Division of Hearings and Appeals does not, therefore, have authority to make a determination on the merits of the matter.

**THEREFORE, it is**

**ORDERED**

That this 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 Milwaukee,  
Wisconsin, this 19th day of November, 2015

---

\sDavid D. Fleming  
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 November 19, 2015.

Division of Health Care Access and Accountability