



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/172840

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 2016, 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 (MA), a hearing was held on April 26, 2016, at Merrill, Wisconsin.

The issue for determination is whether there is any appealable issue for DHA to determine.

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: [REDACTED], DDS (in writing)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Lincoln County.
2. Petitioner received a set of dentures from her provider in 2013.
3. Petitioner is not satisfied with the fit of those dentures.

4. PA # [REDACTED] for a partial denture was denied on 11/16/15.
5. Petitioner filed a request for hearing on 3/14/16.

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 Medical Assistance must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); *Income Maintenance Manual* § 3.3.1. 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 more than 45 days after the date of the 11/16/15 notification of the action to deny the authorization request. The request for hearing was untimely, and no jurisdiction exists for considering the merits of the case.

I understand that petitioner is complaining that her current dentures, fabricated in 2013, do not fit correctly. But, this issue is not properly raised with the ForwardHealth Program. Petitioner should communicate with her dental provider as that provider is the entity that would have fabricated the denture. As it stands, the ForwardHealth Program paid for the dentures that were fabricated. It appears to me that the ForwardHealth Program has done what was asked of it. It may be that if a new PA is filed, and denied, that petitioner may raise some issue with DHA. But, in this case, there is no adverse action by the Department that gives rise to any appeal. I note to petitioner that unless unusual circumstances are documented in a PA request the Department will only allow new dentures every 5 years. If a new request is filed, petitioner may ask her provider to include facts which may support a finding of unusual circumstances necessitating replacement prior to the passing of the 5-year period.

CONCLUSIONS OF LAW

The request for hearing was untimely and DHA does not have jurisdiction to consider the merits of the denial.

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 Madison,
Wisconsin, this 1st day of June, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on June 1, 2016.

Division of Health Care Access and Accountability