



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION
Case #: MGE - 197019

PRELIMINARY RECITALS

Pursuant to a petition filed on November 25, 2019, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock Cty Human Services regarding Medical Assistance (MA), a hearing was held on February 12, 2020, by telephone.

The issues for determination are whether the petitioner's appeal is timely and whether the respondent correctly denied petitioner's MA application due to failure to provide requested verifications.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Petitioner's Representative:

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted]
Rock Cty Human Services
1900 Center Avenue
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Rock County.

2. Petitioner applied for MA benefits on July 30, 2019.
3. Verification of certain information was requested by the respondent on August 13, 2019.
4. The respondent denied petitioner's MA application by notice dated September 3, 2019, due to failure to provide the required verification.
5. On September 5, 2019, the petitioner's representatives supplied a signature page and other verifications, which reopened petitioner's MA application.
6. On September 11, 2019 additional verification was requested, and an erroneous due date of September 20, 2019, was specified in the notice. The notice should have specified a due date of October 4, 2019.
7. On September 23, 2019, the respondent issued a notice to petitioner denying her MA application due to failure to provide requested verification.
8. The petitioner's attorney attempted to submit verifications to the respondent via facsimile on August 29, 2019, August 30, 2019, September 3, 2019, October 1, 2019, October 2, 2019, and October 3, 2019. On October 3, 2019, petitioner's attorney also submitted verifications via US Mail.

DISCUSSION

The department notified the petitioner on September 23, 2019, that her application for institutional medical assistance had been denied. MA recipients must appeal negative medical assistance decisions within 45 days of the later of the date of the decision or the date it went into effect. Wis. Admin. Code § HA 3.05(3). If an appeal is late, the Division of Hearings and Appeals loses its authority to consider it. Petitioner's representatives testified at hearing that the September 23, 2019 notice was never received. The respondent testified that the notice at issue here was mailed to petitioner's address of record.

Where the evidence presented demonstrates that a notice was correctly mailed, this fact creates a rebuttable presumption of delivery that a petitioner must overcome with evidence demonstrating that the notice was not actually received.

This interpretation is confirmed by Wisconsin case law:

It is well established that the mailing of a letter creates a presumption that the letter was delivered and received. *See, Nack v. State*, 189 Wis. 633, 636, 208 N.W. 487(1926), (citing Wigmore, *Evidence*)2d. ed.) § 2153; 1 Wigmore, *Evidence* (2nd ed.) § 95) Mullen v. Braatz, 179 Wis. 2d 749, 753, 508 N.W.2d 446(Ct.App.1993); Solberg v. Sec. Of Dept of Health & Human Services, 583 F.Supp. 1095, 1097 (E.D.Wis.1984); Hagner v. United States, 285 U.S. 427, 430, 52. S.Ct. 417, 418(1932).

***(Portions of discussion not relevant here omitted).

This evidence raises a rebuttable presumption which merely shifts to the challenging party the burden of presenting credible evidence of non-receipt. United States v. Freeman, 402 F.Supp. 1080, 1082(E.D.Wis.1975). Such a presumption may not, however, be given conclusive effect without violating the due process clause. United States v. Bowen, 414 F.2nd 1268, 1273(3d.Cir.1969); Mullen v. Braatz, 179 Wis. 2d at 453. If the defendant denies receipt of the mailing, the presumption is spent and a question of fact is raised. (Examiner note: Citations omitted here.) The issue is then one of credibility for the factfinder. The factfinder may believe the denial of receipt, or the factfinder may disbelieve the denial of receipt.

See State ex. Rel. Flores v. State, 183 Wis.2d 587, at 612-3 ((1994).

Petitioner offered nothing to rebut this presumption other than to state that it was not received. That is insufficient. However, the petitioner further argues that the notice was sent in error, since the respondent has conceded that the verification deadline was incorrectly stated in the September 11, 2019, Notice of Proof Needed. That notice referenced a due date of September 20, 2019, but should have indicated a due date of October 4, 2019. As a result, petitioner contends that the appeal rights contained in the September 23, 2019 are based off of an erroneous determination, and cannot provide a basis for an appeal deadline. I concur, and do not find petitioner's appeal to be untimely.

As to the issue of the denial of petitioner's application, petitioner's representatives documented a number of unsuccessful attempts to provide the requested verifications to the respondent via facsimile. Notably, petitioner's representatives conceded that it did not receive confirmation that the faxed documents were successfully submitted. On October 3, 2019, the petitioner's attorney submitted the requested verifications via facsimile and via US mail, and included a note indicating the previous attempts to submit the verifications vis facsimile.

The respondent countered that the documentation was not received until October 10, 2019, and since that that date was after the October 4, 2019 correct verification deadline, the case remained closed and the verifications were not processed.

I find that the petitioner has established that her attorney made multiple attempts to timely provide the respondent with the requested verifications. The Notice of Proof needed does not specify whether the requested verification needed to be received by the due date, as opposed to being post-marked by that date, and simply states it must be "provided" by the due date. Of note, the petitioner's attorney also attempted to fax the documentation on October 3, in addition to mailing it on that date. As such, I will remand this matter to the respondent to reopen petitioner's MA application and process that with the verifications it received on October 10, 2019.

CONCLUSIONS OF LAW

1. Petitioner's appeal was timely filed.
2. The respondent incorrectly denied petitioner's MA application effective July 1, 2019 due to a failure to timely supply requested verifications, which verification deadline was incorrectly noticed to petitioner.

THEREFORE, it is

ORDERED

This matter is remanded to the respondent to re-open petitioner's July, 2019 application and process that application with the verifications received on October 10, 2019. All actions required by this Order shall be completed within 10 days following issuance of this Decision.

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, 4822 Madison Yards Way, 5th Floor North, 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.

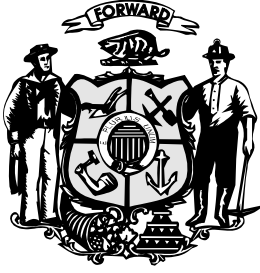
APPEAL TO COURT

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, **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 17th day of March, 2020

\s _____
Peter McCombs
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 March 17, 2020.

Rock Cty Human Services
Division of Health Care Access and Accountability

