



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MDV - 209022

PRELIMINARY RECITALS

Pursuant to a petition filed on June 9, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA), a hearing was held on July 26, 2023, by telephone. The hearing record was held open through August 2, 2023.

The issue for determination is 1) whether petitioner's appeal was filed timely and, if so 2) whether the agency correctly imposed a divestment penalty period for a divestment after a penalty period was served for the same divestment in another state and 3) whether the agency correctly denied the petitioner's request for an undue hardship waiver.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Dana Lee

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Jackson County who resides in a [REDACTED].
2. On January 4, 2023, petitioner's representative [REDACTED] contacted the agency regarding an interview for Long-term Care benefits.
3. On January 5, 2023, the agency issued to petitioner a summary of information she provided in her application that was used to determine her eligibility for health care benefits.
4. On January 9, 2023, [REDACTED] on some verification things.
5. On January 10, 2023, the agency issued to petitioner a Notice of Proof Needed, identifying five specific items, due February 8, 2023.
6. On January 17, 2023, the agency issued to petitioner a Notice of Proof Needed, identifying four specific items, due February 8, 2023.
On February 9, 2023, the agency issued to petitioner a Notice of Proof Needed, identifying two specific items, due February 20, 2023.
7. On February 21, 2023, the agency issued to petitioner an About Your Benefits notice informing her that effective January 1, 2023, she was enrolled in the [REDACTED] Long-Term Care program, with a monthly patient liability of \$2,169.47 and a divestment penalty period from December 22, 2022, through January 16, 2023. The deadline to appeal the determination was April 10, 2023.
8. On March 3, 2023, Wingard called the agency regarding the February 21, 2023, notice, asked about a fair hearing and was told that it must be requested by April 10, 2023. He asked about an undue hardship waiver and was told that it must be filed within 20 days.
9. On March 12, 2023, an undue hardship waiver request was filed on petitioner's behalf, asserting that petitioner divested \$7,015 in 2018 in the form of a gift to her daughter who needed financial assistance, and that in fall of 2022 while a resident of Indiana, petitioner was admitted to a [REDACTED] and that a divestment penalty for the \$7015 divestment was imposed at that time therefore it was a hardship to have the penalty imposed again.
10. On March 17, 2023, the agency denied the Undue Hardship Waiver Request, stating that "you have not provided proof that the denial of long-term care services for the period 12/22/22 – 1/16/23 will create an undue hardship for you." The deadline to appeal was 45 days after the date of the notice, which was May 1, 2023.
11. On March 30, 2023, an agency worker contacted Wingard at his request and asked if he wanted to appeal the undue hardship waiver denial through fair hearing and he said that he did. The agency mailed another fair hearing request form to him.
12. On June 7, 2023, Tobin called the agency about the divestment penalty dispute and was advised to file a fair hearing request and at his request e-mailed a fair hearing request form to him.
13. On June 16, 2023, the Division received petitioner's request for hearing by U.S. Mail postmarked June 9, 2023.

DISCUSSION

On January 4, 2023, petitioner's representative [REDACTED] filed an application for [REDACTED] Long-Term Care Medical Assistance Benefits for petitioner. After necessary verifications to determine eligibility, on February 21, 2023, the agency issued an About Your Benefits notice, informing petitioner that she was eligible for Long-Term Care benefits but imposing a divestment penalty period, calculated by dividing the amount divested (\$8,215) by the average [REDACTED] daily rate (\$308.71), for a 2018 divestment. Petitioner's position at hearing was that the divestment penalty was imposed incorrectly because at an earlier time, a divestment penalty was imposed in the state of Indiana for the same divestment. This was the issue discussed at hearing and the hearing record was held open for the agency

to provide information about the legal basis for its determination. At hearing, neither party raised the issue of timeliness of the appeal.

The February 21, 2023, notice contained language informing petitioner that the deadline to appeal the determination was April 10, 2023. The notice also informed petitioner of the right to request an undue hardship waiver regarding the divestment penalty and that the deadline to do so was 20 days after the date of notice. Petitioner did not appeal the February 21, 2023, determination timely. She did file an undue hardship waiver scanned on March 12, 2023, that the agency considered timely. On March 17, 2023, the agency denied that request. Its notice of denial contained language informing petitioner that the deadline to appeal the undue hardship waiver denial was 45 days after the notice, which was May 1, 2023. Petitioner did not file a timely appeal of that denial.

Although the agency did not raise the issue of untimeliness at hearing, and I was not aware of the timeliness issue until I reviewed the evidence to write this decision, I do not have the authority to disregard appeal deadlines. An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a). The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c).

Petitioner's request for fair hearing was filed with the Division by U.S. Mail, received on June 16, 2023, and considered filed on the post mark date, June 9, 2023. It was filed late, regarding the February 21, 2023, eligibility notice that imposed the divestment penalty and regarding the March 17, 2023, notice of the denial of the undue hardship waiver.

There was no claim that the agency did not provide adequate notice of its decisions or adequate appeal instructions. It is well-documented that Wingard received the negative notices and that, when made aware that he disagreed with its action, the agency repeatedly advised him to request a fair hearing and provided him with multiple copies of the request form.

Because the appeal was filed late, the Division lacks jurisdiction to consider the petitioner's position on the merits regarding the divestment penalty or the undue hardship issues. The powers of administrative agencies, including the Division of Hearings and Appeals, are limited to those expressly granted by the legislature or necessarily implied by the statutes. See *DOR v. Hogan*, 198 Wis. 2d 792, 816, 543 N.W.2d 825 (1995). Appeal deadlines are established by statute or related administrative rules. I have been granted no authority to change or disregard those deadlines.

In the event that petitioner finds this outcome unfair, the Divisions' s assigned administrative law judges do not possess equitable powers and cannot base a ruling upon an idea of what is deemed fair. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 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.

CONCLUSIONS OF LAW

Petitioner's appeal was filed untimely. I have no authority to consider the appeal.

THEREFORE, it is

ORDERED

That the petition for review 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, 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

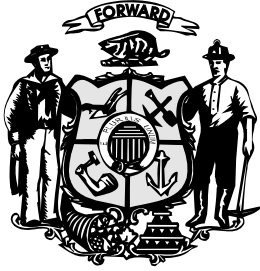
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 25th day of August, 2023



\s _____
Beth Whitaker
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 August 25, 2023.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability