



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: FCP - 209188

PRELIMINARY RECITALS

Pursuant to a petition filed on July 1, 2023, under Wis. Admin. Code § DHS 10.55, to review a decision by the Douglas County Department of Human Services regarding Medical Assistance (MA), a hearing was held on August 30, 2023, by telephone. Hearings scheduled for August 16, 2023 and August 23, 2023, were rescheduled at the request of the petitioner's representative.

The issue for determination is whether the petitioner's appeal is timely filed.

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: Kristen Burstad

Douglas County Department of Human Services
1316 North 14Th Street
Suite 400
Superior, WI 54880

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Douglas County. She was enrolled in the Family Care program between at least July 2022 and July 2023.
2. The petitioner's community waivers cost share was approximately \$308.00 in August, 2022.
3. By notice dated July 22, 2022, the petitioner was informed her community waivers cost share would increase to \$1,289.37 as of September 1, 2022. The deadline to file an appeal was indicated to be October 17, 2022.
4. By notice dated December 5, 2022, the petitioner was informed that her community waivers cost share would be \$1,389.97 as of January 1, 2023. She was informed the deadline to appeal was February 16, 2023.
5. On July 1, 2023, the petitioner's representatives filed an appeal with the Division of Hearings and Appeals seeking to contest the petitioner's cost share for the months of September 2022 through April 2023.
6. The petitioner passed away on [REDACTED].

DISCUSSION

An administrative law judge with the Division of Hearings and Appeals can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely, and the appeal must be dismissed. Wis. Admin. Code, § HA 3.05(4)(a) and (e). At most, an appeal of a negative action by the Department, or its agents, concerning MA must be filed within 90 days of the date of that action. See, Wis. Stat. §49.45(5). A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice.

The appeal as to the petitioner's cost share for the contested period of September, 2022 through April, 2023, is untimely. Even if the 90-day deadline were applied to the notice of cost shares issued in this case, the deadline to appeal would have been December 1, 2022 for the September 1, 2022 notice and April 1, 2023, for the January 1, 2023, notice. The petitioner's representatives did not file an appeal until July 1, 2023, well after the appeal deadlines to address the cost share for the months of September, 2022 through April, 2023. As the appeal is untimely as to those months, the DHA lacks the jurisdiction to address whether the cost shares for September, 2022 – April, 2023 were correctly determined.

I would note that the petitioner's representative indicated that the cost share had been incorrectly calculated due to an error by the petitioner. She simply failed to provide the agency with the correct financial information. It was argued this was due to the petitioner's focus and energy being directed toward her ailing son, who ultimately passed away in [REDACTED]. It was further indicated that the petitioner had historically relied on that individual to assist her in providing the necessary information to the agency for her MA benefits. It was indicated that the appeal was untimely filed as the notices were overlooked due to the extenuating circumstances described above and then the petitioner became ill.

The petitioner's representatives have in effect argued that the agency's calculations in this matter are unfair and that the administrative law judge should grant her relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Public Assistance & Social Services Unit, that the Department'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 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, petitioner's appeal as to the cost share for September, 2022 through April, 2023 was untimely filed. Thus, there is no jurisdiction for DHA to consider the merits of the case.

Finally, the petitioner's representative indicated they were seeking a hardship waiver of the cost share. As indicated at hearing, that issue is not appropriately before the Division of Hearings and Appeals. The hardship waiver needs to be filed with the Department, which will review the request and determine if criteria for approval have been met. Wis. Admin. Code § DHS 10.34(4). No such request had been submitted to the Department as of the hearing. A hardship waiver form can be obtained from the agency.

CONCLUSIONS OF LAW

1. The petitioner's appeal seeking to contest her September, 2022 through April, 2023 cost share is untimely filed, and the Division of Hearings and Appeals lacks jurisdiction to address the merits of an untimely appeal.
2. The hardship waiver is not appropriately before the Division of Hearings and Appeals.

THEREFORE, it is

ORDERED

That 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, 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

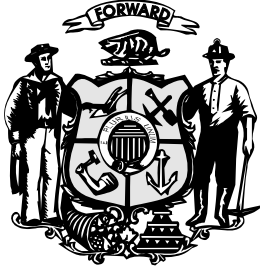
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 5th day of September, 2023



\s _____
Jason M. Grace
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 September 5, 2023.

Douglas County Department of Human Services
Office of Family Care Expansion
Health Care Access and Accountability