



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWA - 213537

PRELIMINARY RECITALS

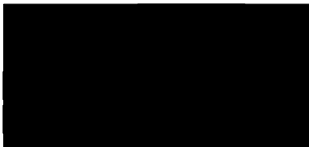
Pursuant to a petition filed on May 22, 2024, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on September 19, 2024, by telephone. A hearing was initially set in this matter for July 10, 2024, but was rescheduled per Petitioner's request. The hearing was then set for August 22, 2024, but was again rescheduled per Petitioner's request. The hearing was ultimately held on September 19, 2024. Prior to the hearing, Petitioner's attorney submitted a brief that detailed the exact issue for determination in this appeal.

The issue for determination is whether there is jurisdiction when the sole issue for determination is whether the agency failed to issue a notice of action.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Lori Kornblum
10936 N Port Washington Road
Suite 296
Mequon, WI 53092

Respondent:

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

By: Angela Sutherland
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County and participates in the IRIS program.
2. On May 22, 2024, Petitioner filed an appeal with the Division of Hearings and Appeals. Subsequently, a second appeal was filed with the Division of Hearings and Appeals on August 26, 2024, which is addressed under DHA case number 214702 and is not the subject in the instant appeal.
3. On September 17, 2024, Petitioner, through her attorney, filed a brief to specify what the issues were for each appeal. This brief notes only two issues as the basis for the appeals. The first issue appealed is that the agency issued a notice of action when one should not have been issued, which is the subject of DHA case number 214702 and will not be addressed here further. The second issue, which is the basis for this appeal is that the agency failed to issue a notice of action. *Exhibit 2, Petitioner's September 17, 2024, Brief*. The failure to issue a notice of action is the sole issue articulated as the basis for this appeal.
4. During the hearing, Petitioner's mother testified on his behalf. She testified that Petitioner moved into an adult family home (AFH) called ██████████, operated by ██████.
5. In January 2024, the Department of Health Services (DHS) contacted ██████ to become certified. An application was due by February 8, 2024, but was not received by DHS until March 14, 2024. The application had not been completed correctly. ██████ was provided an additional week to submit documents, until March 21, 2024. ██████ submitted additional documents but again failed to meet the requirements. ██████████ was then decertified as of March 15, 2024. On March 26, 2024, ██████ submitted additional documents but again they were not submitted accurately as 11 documents were missing. DHS provided another extension to ██████ to submit documentation to become certified, extending the deadline to April 12, 2024, and offering to assist ██████ during an onsite review to obtain the necessary documentation. ██████ did not respond to the extension offer. On April 18, 2024, ██████████ was decertified.
6. On April 19, 2024, Petitioner's mother called the agency and stated she had received the notice of decertification and that payment could no longer be made to ██████. The agency worker explained to Petitioner's mother that ██████ had not submitted documentation to continue the certification process, despite being granted extensions.
7. Petitioner's mother testified that once ██████████ was decertified, she spoke with an agency representative about ██████ becoming an approved worker for Petitioner. Petitioner's mother testified that she was told by the agency that ██████ could not be hired as a care worker because she was missing qualifications, but that a notice of action would be issued regarding the inability to hire ██████. Petitioner's mother further testified that the agency worker stated that services could continue pending the appeal. Petitioner's mother was under the impression that a notice of action would be forthcoming and that she would then file an appeal to continue services until ██████ was officially hired. Between April 25, 2024, through June 1, 2024, ██████ provided services to Petitioner for which she was paid. Petitioner's mother is now seeking backdated coverage to April 25, 2024, or Petitioner will have to pay ██████ out of pocket, which he cannot afford.
8. The agency representative testified ██████ could not be immediately hired because additional information was needed, but that ██████ was officially approved and hired on July 9, 2024. The agency representative stated the agency cannot backdate an approval for coverage for a worker that was not approved before July 9, 2024. The agency noted that it never prohibited ██████ from

being a worker. Rather, ■■■ had to submit necessary information to be approved. Once she did, she was approved. Therefore, there was no negative action taken with respect to ■■■ as a worker for Petitioner.

DISCUSSION

An administrative law judge can review and rule on the merits of an agency action only if there is jurisdiction to do so. Jurisdiction in this appeal is available to review a denial, termination or reduction of MA. See, Wis. Adm. Code §HA 3.03(1). The IRIS policy makes clear that appeals can be filed upon receipt of an NOA for an adverse action, which includes a denial, reduction, termination or limitation of previously authorized services (meaning services/goods on a participant's plan) or when a participant is determined financially, or functionally, ineligible for the IRIS program. See IRIS Policy Manual, available online at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>.

Petitioner's sole basis for appeal in this case is the failure of the agency to issue a notice of action related to the employment of ■■■. The failure to issue a notice of action is not an appealable issue as detailed in the IRIS policy above, which sets forth very specific circumstances under which the Division of Hearings and Appeals has jurisdiction. The failure to issue a notice is not listed as an appealable issue.

Petitioner asserted in his submitted brief that the Division of Hearings and Appeals retains jurisdiction over appealable issues even when a notice of action is not issued. However, this implies that Petitioner has an appealable issue for which the Division of Hearings and Appeals has jurisdiction. It's already been established that the failure to issue a notice is not an appealable issue. In fact, IRIS policy clearly specifies issues that require a notice of action and are thus appealable. Participants may appeal a decision upon receipt of a notice of action, for the following situations:

- Reduced, terminated, or denied requests for services;
- Denied request for payment;
- Failure to provide services or items included in a participant's support and service plan in a timely manner;
- Failure to resolve appeal or grievance in a timely manner; and
- Unacceptable support and service plan because it:
 - Requires participant to live somewhere they do not choose to live;
 - Fails to provide sufficient care, treatment, or support; or
 - Requires the participant to accept care, treatment, or support that is unnecessarily restrictive or unwanted.

See IRIS Policy Manual, available online at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>.

Petitioner's mother testified that she would like back payment for a care worker, ■■■. ■■■ began providing care for Petitioner in April 2024 but was not approved to be a care worker until July 2024. Petitioner's mother noted that Petitioner continued to receive care from ■■■ between April 2024-July 2024 because an agency worker stated that a notice of action would be forthcoming related to ■■■ and Petitioner's mother erroneously believed that payments to ■■■ would be covered. As noted above, back payments to a caregiver prior to the caregiver being hired are not a delineated issue requiring a notice of action or an issue that the Division of Hearings and Appeals has jurisdiction to determine. ■■■ was eventually approved as a care worker for Petitioner, once she met all requirements. However, Petitioner's mother is now seeking back pay for ■■■ to a date that ■■■ had not even been approved. Petitioner's mother seems to make a sort of detrimental reliance argument, noting that because she relied on an agency worker that a notice would be forthcoming, she believed she would be able to appeal that notice and ■■■ would be paid pending the appeal. If Petitioner's mother is making a detrimental reliance

argument, again, this is not the correct venue for that argument. Petitioner’s mother is free to explore her legal options in the correct venue.

As Petitioner's benefits have not been denied, terminated or reduced, there is no negative action for me to address. Accordingly, there is no jurisdiction.

CONCLUSIONS OF LAW

There is no jurisdiction in this case.

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, 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.

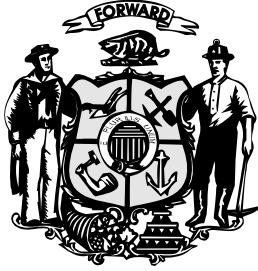
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 18th day of October, 2024

\s _____
Nicole Bjork
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 October 18, 2024.

Bureau of Long-Term Support

