



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: CWA - 215899

PRELIMINARY RECITALS

Pursuant to a petition filed on November 12, 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 December 19, 2024, by telephone.

The issue for determination is whether this appeal is untimely.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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 Milwaukee County and is enrolled in the IRIS program.
2. On August 13, 2024, the agency sent a notice to Petitioner informing her that her request for Home Modifications has been denied. This notice further informed Petitioner that if she wanted

to appeal that denial, she had to file that appeal with the Division of Hearings and Appeals within 90 days of the date of the notice, which was November 11, 2024.

3. On November 12, 2024, the Division of Hearings and Appeals received Petitioner's appeal.
4. During the hearing, the agency representative noted that the notice was based on prior home modification requests that had already had notices issued and, in some cases, had already been appealed and decided upon. The agency representative noted that no new action had been taken since the previous appeals had been decided. The agency representative noted that while there was no underlying action recently taken, they had been instructed to issue the notice.

DISCUSSION

An appeal of a negative action concerning MA must be filed within 90 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a); IRIS Policy Manual: Work Instructions, §11.1A.1. Language concerning the right to appeal and the time limit is included on all department notices. 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). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

In this case, the appeal was required to be filed by November 11, 2024. The appeal request was faxed and received on November 12, 2024. Therefore, the appeal is untimely, and I have no jurisdiction to hear the underlying merits of the case.

However, even if the appeal had been timely, there would be no issue for determination. The agency issued the notice triggering appeal rights. However, there was no recent action taken by the agency that should have triggered that notice. There is quite a history between Petitioner and the agency related to home modification requests that were made years ago. Each of those requests triggered a timely notice of action by the agency. In some cases, Petitioner appealed those notices and decisions were made. Since decisions were made on those exact same issues, I have no authority to rehear and decide those issues. In those instances where the notices were not appealed, the deadline to file an appeal in those cases has long since passed.

Claim preclusion (formerly known as *res judicata*) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as *collateral estoppel*) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

Therefore, even if the current appeal had been timely, since the previous issues have either been decided in other appeals or the deadline has long since passed to file such appeals, issue preclusion and untimeliness would prevent me from making a new determination.

CONCLUSIONS OF LAW

That this appeal is untimely.

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.

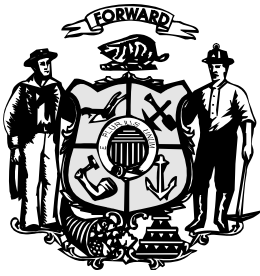
APPEAL TO COURT

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 30th day of January, 2025

\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 January 30, 2025.

Bureau of Long-Term Support