



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MDV - 217177

PRELIMINARY RECITALS

Pursuant to a petition filed on February 18, 2025, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services regarding Medical Assistance (MA), a hearing was held on July 8, 2025, by telephone. Hearings set for April 2, May 7, June 11, and July 9, 2025 were rescheduled at the petitioner's request.

The issue for determination is whether petitioner's appeal seeking backdated institutional MA was timely filed.

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Atty. Avery J. Mayne
Von Briesen & Roper, S.C.
411 E Wisconsin Ave., Suite 1000
Milwaukee, WI 53202

Respondent:

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

By: Shelly Quick
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. Petitioner was hospitalized in June, 2023, and in July, 2023, he was transferred to [REDACTED], a nursing home. He still resides at [REDACTED].
3. An application for MA was filed in June, 2023, while petitioner was hospitalized. The paperwork noted an authorized representative from Aspirom, a company that assists hospitalized individuals apply for MA. That application was denied on August 8, 2023.
4. On July 31, 2023, a second application for MA was filed, signed by petitioner's brother, who has power-of-attorney for health care, and noting his placement at [REDACTED]. The application noted that petitioner's mailing address was on [REDACTED] in Green Bay. The county did not accept an authorization for representation for [REDACTED] staff signed by petitioner's brother because the power of attorney is for health care decisions only. The July 31 application was denied on August 31, 2023, with the notice going to the [REDACTED] address and to Aspirom.
5. All subsequent notices were sent to both petitioner and to the Aspirom authorized representative. The Aspirom representative took no role in petitioner's application process after the initial June 23, 2023 application.
6. On October 23, 2023, the July 31, 2023 application was resubmitted, still showing [REDACTED] as petitioner's mailing address. The resubmission was denied by a notice dated November 22, 2023, sent again to the [REDACTED] address.
7. On December 14, 2023, a third application was submitted, by [REDACTED] staff, again showing [REDACTED] as petitioner's mailing address. At that point [REDACTED] staff were assisting petitioner actively, although the county agency still did not accept an official authorization to represent. That application was denied in late January, 2024, according to case comments (no notice was provided as an exhibit by either party).
8. On April 24, 2024, the county agency received as return mail the November 3, 2023 sent to petitioner at the [REDACTED] address. Other returned mail dating back to late 2023 were received subsequently.
9. On May 16, 2024, [REDACTED] staff filed another application, still showing [REDACTED] as petitioner's mailing address. That application was denied on June 27, 2024, with petitioner's notice sent to his brother's address, a change resulting from the returned mail. A later written notice was sent to petitioner's guardian – see finding no. 11.
10. On July 23, 2024, [REDACTED] staff filed a fifth MA application on petitioner's behalf. On August 8, 2024, [REDACTED] was appointed as petitioner's guardian. She took over as the primary person acting on petitioner's behalf, and all notices thereafter were sent to her.
11. On September 5, 2024, the county issued a notice to [REDACTED] that an April 1, 2024 MA application was denied. On October 22, 2024, the county issued a notice to [REDACTED] that a June 1, 2024 application was denied. See Agency Exhibits. Those notices referred to the applications actually filed in May and July, 2024.
12. Eventually the county found that petitioner was eligible, but that he had to serve a divestment penalty. A request for waiver of the penalty was granted. Petitioner was granted eligibility effective January 1, 2025. It was determined that petitioner had countable assets over \$2,000 that were spent down in January, making him eligible that month. Petitioner was granted a deviation

of his \$1,899 monthly cost of care to allow payment on his nursing home bill dating back to July, 2023.

13. On February 18, 2024, [REDACTED] filed this appeal seeking MA coverage back to 2023. Prior to the hearing Attorney Mayne specified that coverage was sought for the period October 1, 2023 through July 31, 2024 (presumably because assets became countable again with the appointment of the guardian). [REDACTED] agreed that Attorney Mayne could speak for petitioner's interests for purposes of this appeal.

DISCUSSION

As a first point, Corp. Counsel Schaefer objected to Attorney Mayne's representation of petitioner, noting that she actually represents [REDACTED]. I conclude that her participation in the hearing is allowable. At this stage petitioner and [REDACTED] have a shared interest – obtaining MA eligibility for him. Furthermore, petitioner's guardian agreed to having Attorney Mayne advocate on his behalf. I thus am overruling the objection.

Wis. Stat., §49.45(5)(a) provides:

Any person whose application for medical assistance is denied or is not acted upon promptly or who believes that the payments made in the person's behalf have not been properly determined or that his or her eligibility has not been properly determined may file an appeal with the department pursuant to par. (b). Review is unavailable if the decision or failure to act arose more than 45 days before submission of the petition for a hearing, except as provided in par. (ag) or (ar).

Paragraphs (ag) and (ar) are irrelevant to this situation. See also Wis. Admin. Code §DHS 104.01(5)(a).

I have written lengthy findings of fact for what I conclude is a simple determination. This appeal seeking MA coverage for the period October 1, 2023 through July 31, 2024 is untimely. Petitioner and his advocates were notified in 2023 and 2024 that the various MA applications were denied. No appeals were filed until February, 2025. Petitioner and those representing him could at any time have filed an appeal complaining that the county agency was not acting on his applications promptly and properly, for example that the agency did not act on the attempts to change the authorized representative or that petitioner's doctor declared him to be incompetent. However, such an arguable lack of promptness and/or impropriety occurred far earlier than 45 days prior to this appeal.

Petitioner's primary argument is that the county sent notices to him that he did not receive, citing Division of Hearings and Appeals case number MGE-192500 for the proposition that notices must be sent to both the MA applicant and an authorized representative. See Petitioner's Exhibit Z. This case is distinguished. In case number MGE-192500 the agency sent notices to the authorized representative, but not the applicant himself. Here the agency sent notices to petitioner at the address listed on his applications as his mailing address. Even after the notices started to return to the agency, some six months after they were sent, petitioner's representatives continued to file applications showing the [REDACTED] address as his mailing address, although the agency changed the mailing address to his brother's address at that point, until the guardian was appointed.

Furthermore, petitioner's advocates clearly were aware of the denials because they continued to file new applications. At any time a person acting on petitioner's behalf could have appealed a denial or the agency's failure to act properly. No appeals were filed.

Finally, even after [REDACTED] was appointed as petitioner's guardian, the county sent her a notice dated September 5, 2024, denying MA. She did not appeal within 45 days. She also did not appeal within 45 days of an October 22, 2024 denial notice. Even if I were to assume that the numerous notices sent prior to the appointment of the guardian were defective, an appeal of those denials should have been filed at the latest within 45 days of the September 5 notice. I conclude that this appeal seeking a determination that petitioner was eligible for MA from October 1, 2023 through July 21, 2024, was filed untimely.

CONCLUSIONS OF LAW

Petitioner's appeal seeking a determination that he was eligible for MA from October 1, 2023 through July 21, 2024, was filed untimely.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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.

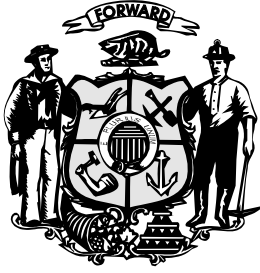
APPEAL TO COURT

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 11th day of July, 2025

\s _____
Brian C. Schneider
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 July 11, 2025.

Brown County Human Services
Division of Health Care Access and Accountability
Attorney Avery Mayne