DHA-15 (R10/97)

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)
(petitioner's address)

DECISION

MDV-40/47365

PRELIMINARY RECITALS

Pursuant to a petition filed December 28, 2000, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Milwaukee County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on March 29, 2001, at Milwaukee, Wisconsin. A hearing previously set for February 22, 2001 was rescheduled at petitioner's request.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

Respondent:

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309
By: Patricia Quezaire, ESS
Milwaukee County Dept Of Human Services
1220 W. Vliet St, 3rd Floor
Milwaukee, WI 53205

EXAMINER:
Kenneth P Adler
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Milwaukee County.

2. On 12/27/99 petitioner's authorized representative submitted an Institutional MA application.

3. The county agency processed the MA application and concluded a divestment had occurred during August 1997.

4. On 01/27/00 the county agency issued a notice of decision stating the transfer of cash and property in August 1997 resulted in a divestment penalty period of 36 months ending July 2000 with full benefits to begin August 1, 2000. The notice contained fair hearing rights. Exhibit 1

5. Petitioner's authorized representative received the 01/27/00 notice but found it confusing. Instead of filing a fair hearing he attempted to contact the county agency during January and early February for clarification of the language on the notice.

6. During part of February and March 2000 petitioner's authorized representative was on vacation. Upon return in late March he discovered petitioner's nursing home bills were being paid by the MA program.

7. Petitioner's nursing home bills continued to be paid from January through April 2000. This was a mistake on the part of EDS – the fiscal intermediary for the MA program. The county agency had informed EDS petitioner was not eligible for institutional MA due to divestment but EDS did not follow that directive and paid the nursing home bills which were submitted on petitioner's behalf.

8. Petitioner's institutional MA eligibility began effective 08/01/00.

DISCUSSION

The first issue for determination is whether petitioner's appeal is timely. Administrative law judges do not have authority to review untimely appeals. As a general rule, an appeal must be filed within 45 days of the action which is being appealed. Wis. Stat. s. 49.45(5).

There is no dispute petitioner's authorized representative received the January 2000 notice with fair hearing rights. While it is understandable that the representative found it reasonable to attempt to contact the worker for an explanation of the notice, this does not override the fact that he had 45 days from the date of the notice in which to file an appeal contesting either the determination a divestment had occurred or the calculation of the penalty period. Petitioner did not appeal until April 2001, therefore, I must conclude the appeal is untimely and I do not jurisdiction to consider the merits of the appeal.

However, I note that even if I *could* consider the merits of the case, there would be no remedy which I could provide. Petitioner does not dispute the penalty period resulting from the divestment was 36 months. According to my calculations, a divestment penalty was only imposed for 32 months so petitioner actually received coverage for four months of nursing home care for which she was not financially eligible. However, as this was clearly based upon agency error, and no misstatement or failure by petitioner to provide information regarding her eligibility, the state is prevented from recovering that apparent overpayment. MA Handbook, Appendix 34.1.0.

CONCLUSIONS OF LAW

That petitioner's appeal is untimely and therefore this office does not have jurisdiction to consider the merits of the case.

NOW, THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found 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 no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2001.

_____
Kenneth P Adler
Administrative Law Judge
Division of Hearings and Appeals
510/KPA

cc: MILWAUKEE COUNTY DEPT OF HUMAN SERVICES
DHFS - Susan Wood