STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MDV-67/112505

PRELIMINARY RECITALS

Pursuant to a petition filed June 21, 2010, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health & Human Services in regard to Medical Assistance, a hearing was held on August 02, 2010, at Waukesha, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Kunle Fajembola
Waukesha County Health & Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:
Marina Croft
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted] is a resident of Waukesha County.
2. On April 22, 2010, the county agency sent a written notice of negative action to petitioner informing that she was not eligible for MA benefits from March 1, 2010 to April 11, 2010 because divested income had caused a penalty period during this time allowing Medicaid (MA) card services only. The notice also indicated that petitioner had 45 days to request a fair hearing with the Division of Hearings and Appeals.

3. On April 29, 2010, the county agency issued a negative notice of decision to petitioner's authorized representative, Lake Health and Rehab, informing that she was eligible for MA benefits effective April 1, 2010. The notice also indicated that petitioner had until June 14, 2010, to request a fair hearing with the Division of Hearings and Appeals.

4. On June 21, 2010, petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case.

In this case, the negative action was the county agency's decision that petitioner was not eligible for MA benefits from March 1, 2010 to April 11, 2010 because divested income had caused a penalty period during this time allowing Medicaid (MA) card services only. Petitioner was notified of this determination on April 22, 2010. Petitioner's authorized representative was also notified of this determination on April 29, 2010. Petitioner's appeal was filed on June 21, 2010, which is after the June 14th appeal deadline, 53 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

At the hearing, petitioner's representative, and son, indicated that he did not know anything about the negative action and/or his mother's appeal rights because the notice was sent to the nursing home.

However, I cannot find jurisdiction based upon this allegation for several reasons. First, the mailing of a letter creates a presumption that the letter was delivered and received. Petitioner's representative did not argue that the letter was not received and/or that there were any problems with delivery. Second, the automated notices currently used have been standardized for easy reading –as easy as it can be when it comes to public assistance policy. The notices clearly indicate that petitioner was not eligible for this benefit and they also have the name and telephone number of the worker that was working on the case. Waukesha County workers have a reputation for promptly contacting clients and addressing their needs. Third, the county agency had no input with respect to the designation of the authorized representative; petitioner's representative testified that his brother (and authorized representative at the time) authorized the nursing home to act on their mother's behalf.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is **ORDERED**

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge 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.

To ask for a rehearing, 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 for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be 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 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to Circuit Court, the Respondent in this matter is the Department of Health Services. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of August, 2010

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/sMarina Croft
Administrative Law Judge
Division of Hearings and Appeals