



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████████████
██████████████████████████████

DECISION
Case #: MGE - 205689

PRELIMINARY RECITALS

Pursuant to a petition filed on July 7, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was scheduled for August 31, 2022, at 1:00 P.M., by telephone. **That hearing is canceled by the result of this Decision on the Division's administrative record.**

The issue for determination is whether jurisdiction is present to reach the merits of the petitioner's appeal concerning the denial of reimbursement of \$5,558 in mileage reimbursements by the Medical Assistance program for medical transportation.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████████████
██████████████████████████████

Respondent:

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

By: Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County. He was certified as eligible for Medical Assistance in at least the period of August 4, 2019 – February 25, 2020. See, final Decision in DHA Case No. MGE-1898442 (Wis. Div. Hearings Appeals August 3, 2020)(DHS), at pp. 1-3.

2. On at least 15 separate dates in the period of time described in Finding of Fact No. 1, above, the Department denied the petitioner's multiple ongoing requests for reimbursement of medical transportation expenses for the dates in 2019 of July 5, 18, 19, 23 (2 trips on this last date); August 4, 7, 8, 21; September 6, 11, 24, 28; October 7 (3 trips on this date); and November 21. Likewise, the Department denied the petitioner's multiple ongoing requests of the same transport expense for the dates in 2020 of January 7, 15, 24, 28, 31; and finally, on February 25, 2020. These twenty-two reimbursement claims totaled \$5,584.68 in medical transportation expense that were denied for reimbursement by the Wisconsin Department of Health Services. See, final Decision in DHA Case No. MGE-198442 (Wis. Div. Hearings Appeals August 3, 2020)(DHS); at pp. 2-3.
3. The petitioner filed a previous appeal in DHA Case No. MGE-198442 on March 25, 2020, contesting the Department's denial of reimbursement as identified in Finding of Fact No. 2, above. *Ibid*, at p. 1.
4. On August 3, 2020, the Division's then-assigned administrative law judge dismissed the petitioner's appeal in DHA Case No. MGE-198442 in its entirety. *Ibid*, at p. 9. The Decision was issued by regular mail and it fully informed the parties that any rehearing request must be received by the Division within 20 days of the date of the decision, and the address to which to do so. The Decision fully informed the parties of their right to file an appeal with the Circuit Court in the Wisconsin county where either party lives within 30 days of the date of the decision or a timely rehearing request, pursuant to Wis. Stat. §§ 227.52-.53.
5. On December 3, 2020, the petitioner left a voicemail with the Division asserting verbally that he desired to file a rehearing request to contest the final Decision in DHA Case No. MGE-198442 for the first time. He stated no grounds for the rehearing request in the audio request. See, DHA case file, MGE-198442.
6. On December 3, 2020, the Division, by the undersigned administrative law judge acting in his capacity as Assistant Administrator for the Division's Public Assistance & Social Services Unit, issued a letter to the petitioner informing him that his verbal request of December 3, 2020, would not be processed further as it was required to be made in writing under Wis. Stat. § 227.49(1). The letter also informed him that his verbal request was made well beyond the 20-day rehearing request period under Wis. Stat. § 227.49(1); and it stated no grounds at all to support the request as required under Wis. Stat. § 227.49(3). See, DHA case file, MGE-198442.
7. On April 3, 2021, the petitioner filed a written rehearing request to contest the final Decision in DHA Case No. MGE-198442. He again asserted no factual grounds for mistake of law or fact by the original administrative law judge in his request. See, DHA case file, MGE-198442.
8. By the date of April 3, 2021, the administrative law judge who issued the final Decision in DHA Case No. MGE-198442 had retired.
9. On April 5, 2021, the Division, by the undersigned administrative law judge acting in his capacity as Assistant Administrator for the Division's Public Assistance & Social Services Unit, issued a REHEARING REQUEST ORDER, denying the petitioner's rehearing request of April 3, 2020, in DHA Case No. MGE-198442, as untimely filed. See, DHA case file, MGE-198442.
10. On July 13, 2022, the petitioner filed a new Request for Fair Hearing form with the Division stating "AT THE REQUEST OF GOVERNOR TONY EVERS, I AM OWED \$5558.00 FOR GAS MILEAGE REIMBURSEMENT FOR MEDICAL TRANSPORTATION TRIPS I DROVE MY VEHICLE AS A CONSTITUENT OF THE STATE OF WISCONSIN FORWARD HEALTH PROGRAM ADMINISTERED BY MEDICAL TRANSPORTATION MANAGEMENT. I ALSO

REQUEWST COPIES OF MY DISTANCE VERIFICATION FORMS, AND GAS MILEAGE REIMBURSEMENT TRIP LOGS OF ALL THESE MEDICAL TRIPS IN MY FILE, AS WELL, FOR MY APPEAL. PLEASE PROVIDE ME THESE COPIES AT MY ADDRESS LISTED BELOW. THE GOVERNOR HAS GRANTED MY REQUEST FOR A FAIR HEARING APPEAL. THANK YOU VERY MUCH.” See, Petitioner’s Fair Hearing Request form and attachments in the case file, DHA Case No. MGE-205689.

11. Also attached to the FAIR HEARING REQUEST form was a copy of a letter the DHS Constituent Relation Specialist, Leanne Bergstrom, stating that at the request of the Governor, the new request form was included. See, Petitioner’s Fair Hearing Request form and attachments in the case file, DHA Case No. MGE-205689. She also stated in the letter attached to the appeal request,

Your \$5000 GMR reimbursement has been reviewed vigorously by MTM from prior requests. Your prior requests were denied due to multiple reasons.

1. Member had requested reimbursements for appointments not attended.
2. No prior authorizations on file.
3. GMR had been previously paid

There is nothing else that needs (sp) to be reviewed with regards to outstanding GMR unless you have new inquiries and dates.

12. The Division’s support staff processed the petitioner’s July 13, 2022, REQUEST FOR A FAIR HEARING as a new appeal about a new issue, assigning it DHA Case No. MGE-205689 and a new hearing date of August 31, 2022, at 1:00 P.M.

DISCUSSION

This is a highly unusual fact pattern. Here, the petitioner is quite evidently filing a new appeal with the Division only to again re-litigate the issue of the self-same \$5,500+ claim for medical transportation reimbursement dismissed by ALJ Michael O’Brien in a final decision in DHA Case No. MGE-198442 on August 3, 2020. The Division’s current support staff apparently did not recognize that this petitioner was seeking to pursue the very claim previously fully litigated and opened a new case file and case number; and set up a new hearing date.

As the aphorism goes, “That dog won’t hunt.” Despite this petitioner’s doggedness in pursuing reimbursement for these medical transportation trips in 2019-2020, he has had his day in court, and his claims for this time period were dismissed after a full fair hearing on the record. See, the final Decision in DHA Case No. MGE-198442 (Wis. Div. Hearings Appeals August 3, 2020)(DHS), at p. 9. Likewise, the petitioner thereafter sat on his rights for a rehearing or an appeal for too long and lost those rights with respect to the claims and issues decided in DHA Case No. MGE-198442. As he was fully informed on two subsequent occasions in writing. In fact, this re-filing at this late juncture over two years later smacks of the abuse of the administrative hearing process. It also appears that the petitioner misconstrued the communication from the DHS Customer Relations Specialist in his appeal request. With all due respect to Governor Tony Evers, even he cannot confer jurisdiction over a legal matter already decided as a matter of legal record, even had he intended to do so. (Which the correspondence from Bergstrom does not indicate, despite the petitioner’s assertions in his appeal letter.)

In any event, the Wisconsin Administrative Code provides as follows:

- (4) The division shall deny or dismiss a hearing request under any of the following circumstances:

(a) The division does not have jurisdiction to conduct a hearing on the matter.

Wis. Admin. Code § HA 3.05(4)(a).

The Division does not have jurisdiction to again review the *same* claim at this late juncture.

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.” *Id.*, p. 550. (ALJ’s Note: Italics added for emphasis.)

The Supreme Court also cited with approval in *Northern States Power Co. to Lindas v. Cady*, 183 Wis. 2d 547, at 558; see also, 515 N.W. 2d 458 (1994). In *Lindas*, the Supreme Court stated as follows:

Under claim preclusion, or *res judicata*, “a final judgment is conclusive in all subsequent actions between the same parties as to all matters which were litigated or which might have been litigated in the former proceedings. *DePratt v. West Bend Mutual Insurance Co.*, 113 Wis. 2d 306, 310, 334 N.W.2d 883 (1983). “Estoppel by record,” the doctrine relied upon by the circuit court and the court of appeals in this case, is identical to claims preclusion except that it is the record of the earlier proceeding, rather than the judgment itself, which bars the subsequent proceeding. *Brooks v. Bank of Wisconsin Dells*, 161 Wis. 2d 39, 46, 467 N.W.2d 187 (Ct. App. 1991). In order for claim preclusion or estoppel by record to apply, there must be an identity of parties or their privies and an identity of claims in the two cases. *DePratt*, 113 Wis.2d at 311.

Lindas v. Cady, 183 Wis. 2d 547, at 558 (1994).

All of the foregoing conditions are met. The claim here is between the same parties, and the identity of the claim is essentially identical. The doctrine of claim preclusion (formerly known as apt legal phrase, “estoppel by record”) bars re-consideration of this petitioner’s claim at this late juncture.

While it is indeed unfortunate that the instant hearing request was not correctly identified as the late and third attempt at a rehearing request in DHA Case No. 198442 that it *really* amounts to, the fact is that a new file was established requiring that this final decision be issued in DHA Case #: MGE-205689 to administratively close out this instant appeal request.

As a result, the telephonic fair hearing set for August 31, 2022 at 1:00 P.M. is canceled. No hearing will be held. The appeal is dismissed as further re-consideration of the \$5,500+ claim for medical transportation reimbursement arising between August 4, 2019 – February 25, 2020 is barred by the doctrine of claim preclusion.

As before in DHA Case No. 198442, if the petitioner disagrees with this decision, the process for rehearing and appeal of this Decision is fully set forth below. He should fully state his grounds for an error of fact or law therein.

CONCLUSIONS OF LAW

Jurisdiction is not present to reconsider the petitioner’s \$5,500+ claim for medical transportation reimbursement arising between August 4, 2019 – February 25, 2020, under the doctrine of claim preclusion; his claims for this period are estopped by the record.

THEREFORE, it is

ORDERED

That the petition for review of the petitioner’s \$5,500+ claim for medical transportation reimbursement by the MA Program arising between August 4, 2019 – February 25, 2020 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

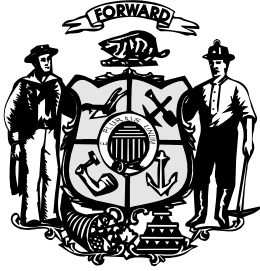
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 Madison,
Wisconsin, this 29th day of July, 2022



\s _____
Kenneth D. Duren
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 29, 2022.

Division of Medicaid Services

