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**DISTRICT IV**

December 19, 2017

To:

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You are hereby notified that the Court has entered the following opinion and order:

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2016AP2080

Kathleen M. Hansel v. Department of Health Services  
(L.C. #2016CV773)

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Kathleen Hansel appeals from a circuit court order dismissing her petition for WIS. STAT. ch. 227 (2015-16)<sup>1</sup> review of an adverse ruling of the Wisconsin Division of Hearings and Appeals (DHA) on the ground that it was not filed within thirty days as required by WIS. STAT. § 227.53(1)(a)2. Upon our review of the briefs and records, we conclude at conference that this

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

For the purposes of this appeal, for reasons that will be clear from the following recitation, we assume as true factual findings set forth in the Department of Health Services (DHS)'s decision from which Hansel sought review, the factual allegations in Hansel's petition for review, and the averments contained in the affidavit of an employee of Hansel's legal counsel.

Hansel is a registered nurse and a certified Medicaid provider. In January 2012, Hansel submitted materials to renew her Wisconsin nursing license and in February 2012, Hansel confirmed that those materials had been received and that her nursing license was in active status. In April 2012, the Department of Safety & Professional Services (DSPS) sent by certified mail a letter to Hansel notifying her that her renewal application was being denied due to a tax delinquency. A notice from the U.S. Postal Services to DSPS verified that Hansel did not receive the April letter from DSPS.

Between March 2012 to February 2014, Hansel provided nursing care to Medicaid enrollees and was reimbursed for the care she provided by Wisconsin's Medicaid program. In February 2014, DSPS notified Hansel that DSPS had been notified that Hansel was working as a nurse without an active license, and DHS deactivated Hansel's enrolment as a certified Medicaid provider retroactive to February 29, 2012. Hansel made arrangements with the Wisconsin Department of Revenue to pay her delinquent taxes, and in April 2014, DSPS reactivated Hansel's nursing license.

During the period that Hansel's nursing license was inactive, approximately March 2012 to February 2014, Hansel provided nursing services that were billed to and paid under Medicaid in the amount \$142,914.72. DHS's Office of Inspector General issued Hansel notice that it intended to seek recoupment of the amount paid to Hansel under Medicaid while her license was inactive because Hansel was ineligible to receive Medicaid payments during that time period.

Hansel sought administrative review of the Office of Inspector General's intent to recoup those payments, and the ALJ determined that Hansel was liable for repayment of \$142,914.72. DHA adopted the ALJ's decision by a letter dated and mailed on July 5, 2016.

Through counsel, Hansel sought review of DHA's decision by the circuit court. At 5:10 p.m. on August 3, 2016, office staff for Hansel's legal counsel deposited the petition for review in a FedEx box in Madison for overnight delivery to the Rock County Circuit Court. According to FedEx's website and information posted on the FedEx box where the petition was deposited, the last pickup on August 3, 2016 at that location was scheduled to occur at 6:00 p.m., and the indicator on the outside of the FedEx box showed that final pickup had not occurred. However, FedEx made the final pickup at that box on August 3 at 4:34 p.m. Hansel's petition for review was not picked up until August 4 and was not delivered to the Rock County Circuit Court until August 5, 2016, the 31st day after DHA's decision was mailed to Hansel.

DHS moved to dismiss Hansel's petition for review on the ground that it was not timely filed. The circuit court granted DHS's motion following a hearing.

Hansel contends that the circuit court erred in dismissing her petition for review. Hansel contends that although her petition was not filed within thirty days, as required by WIS. STAT.

§ 227.53(1)(a)2., the circuit court should nevertheless have exercised jurisdiction over the action. For the reasons explained below, we affirm.

“WISCONSIN STAT. § 227.53(1) establishes the procedural requirements for filing and serving a petition for judicial review of an agency decision.” *Wisconsin Power and Light Co. v. PSC*, 2006 WI App 221, ¶11, 296 Wis. 2d 705, 725 N.W.2d 432. Subsection (1)(a)2. provides that in a contested case, petitions for review of the agency’s decision “shall be served and filed within 30 days after the service of the decision of the agency upon all parties under [WIS. STAT. §] 227.48.” Service of the decision occurs on the date the agency’s decision is mailed to the parties. *Wisconsin Power and Light Co.*, 296 Wis. 2d 705, ¶11.

The law is well established that when the time limitation of WIS. STAT. § 227.53(1)(a)2. is triggered, “strict compliance is required” and the failure to comply with the mandatory time limitation results in the circuit court’s loss of competency to proceed and the dismissal of the petition for review. *See id.*, ¶11. *See also Currier v. DOR*, 2006 WI App 12, ¶23, 288 Wis. 2d 693, 709 N.W.2d 520; *Kegonsa Joint Sanitary Dist. v. City of Stoughton*, 87 Wis. 2d 131, 145, 274 N.W.2d 598 (1979); and *Cudahy v. DOR*, 66 Wis. 2d 253, 224 N.W.2d 570 (1974).

Hansel acknowledges that her petition for review of DHA’s decision was not filed with the circuit court within thirty days after service of DHA’s decision. However, she contends that the court should nevertheless exercise jurisdiction over the matter. Hansel sets forth three main arguments in support of her contention.

First, Hansel argues that a litigant’s failure to comply with a statutory time limit results in a circuit court’s loss of competency to oversee a case only when the statutory compliance is central to the statutory scheme. Hansel argues that the thirty-day time limit is not central to WIS.

STAT. ch. 227, the purpose of which is to provide litigants “a simple means of review to those aggrieved by decisions of Wisconsin’s many agencies,” and that the thirty-day deadline is “more technical than fundamental.” Hansel argues that because the statutory time limit is not central to ch. 227’s purpose, the circuit court was not deprived of competency as a result of her late filing.

This court has previously held that the failure to comply with WIS. STAT. § 227.53(1)(a)2. *does* result in a circuit court’s loss of competency to proceed. *See Wisconsin Power and Light Co.*, 296 Wis. 2d 705, ¶11. We are bound by this holding. *See Cook v. Cook*, 208 Wis. 2d 166, 185–190, 560 N.W.2d 246 (1997) (the court of appeals is bound by published decisions of the court of appeals). Accordingly, we reject this argument.

Hansel’s two remaining arguments are that the circuit court should have found that her petition was timely filed pursuant to WIS. STAT. § 801.15(2)(a)<sup>2</sup> based on a finding of excusable neglect, and that the circuit court should have extended the filing deadline by three days pursuant to § 801.15(5)(a).<sup>3</sup>

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<sup>2</sup> WISCONSIN STAT. § 801.15(2)(a) provides:

When an act is required to be done at or within a specified time, the court may order the period enlarged but only on motion for cause shown and upon just terms.... If the motion is made after the expiration of the specified time, it shall not be granted unless the court finds that the failure to act was the result of excusable neglect.

<sup>3</sup> WISCONSIN STAT. § 801.15(5)(a) provides:

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party: (a) if the notice or paper is served by mail, 3 days shall be added to the prescribed period.

Hansel asserts that WIS. STAT. §§ 801.15(2)(a) and (5)(a) apply to the computation of time for service of a petition under WIS. STAT. § 227.53 because those subsections do not exclude § 227.53 from applicability. Hansel also asserts that §§ 801.15(2)(a) and (5)(a) apply because they do not conflict with § 227.53(1)(a)2., which does not specifically prohibit the enlargement of time for service of a petition. In addition, Hansel argues that if § 801.15(2)(a) does not apply here, it “could never be applied, because it would always be defeated by more specific statutes containing discrete timelines.”

In *Ryan v. DOR*, 68 Wis. 2d 467, 469 n.1, 228 N.W.2d 357 (1975), our supreme court concluded that the precursor to WIS. STAT. § 801.15, WIS. STAT. 269.36, “applies only to judicial actions or proceedings and does not apply to proceedings before or appeals from administrative tribunals.” See also *Johnsonville Sausage, Inc. v. DOR*, 113 Wis. 2d 7, 8 n.3, 334 N.W.2d 269 (Ct. App. 1983) (concluding that § 801.15 “does not apply to appeals from administrative proceedings to the circuit court.”)

Our supreme court’s statement in *Ryan* teaches that there is a difference between the rules governing the time limitation for filing a petition to commence an administrative review proceeding and the rules governing the time limitations for filing pleadings in a non-administrative review proceeding, and we are prohibited from disregarding the supreme court’s conclusion that § 801.15 cannot form the basis for enlarging the time within which a petition for review of an administrative decision must be filed. See *Cook*, 208 Wis. 2d at 189-90 (only the supreme court has the power to overrule, modify or withdraw language from a published decision). Accordingly, we conclude that Hansel’s arguments that WIS. STAT. §§ 801.15(2)(a) or (5)(a) save her untimely filing are unavailing.

Accordingly, for the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. Rule 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*