



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAC/170223

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2015, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a hearing was held on December 22, 2015, at Elkhorn, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED]
[REDACTED]

Respondent:

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

By: Laura Middleton

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. On April 15, 2015 the agency sent the petitioner a notice stating that the petitioner was overpaid \$625.46 in BadgerCare (BC) Plus payments for the period of March 1, 2014 through August 31, 2014. The notice specifically stated that the petitioner had 45 days to appeal.

3. The agency sent the petitioner a repayment agreement, three separate dunning notices, and a notice of tax intercept.
4. The petitioner filed an appeal regarding the tax intercept. A hearing was scheduled. At the hearing the petitioner withdrew her appeal on the record.
5. On November 20, 2015 the Division of Hearings and Appeal received the petitioner's Request for Fair Hearing on the underlying overpayment.

DISCUSSION

Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. The agency notified the petitioner on April 15, 2015 that it would seek to recover \$625.46 in medical assistance benefits provided to her and her family from March 1, 2014 through August 31, 2014. She appealed this decision on November 20, 2015, well past 45 days later. Because the appeal is late, the DHA has no jurisdiction to consider it. Therefore, I must dismiss the appeal and uphold the agency's decision.

I note that if I had jurisdiction, I would conclude that the overpayment is correct. MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's MA Handbook, Appendix 6.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

In this case the petitioner's income went over the reporting requirement, and the petitioner failed to report the income, which caused the overpayment. The petitioner alleges that there should be no overpayment because his veteran's income should not be included when determining BC Plus eligibility. Around the time of this overpayment, BC Plus rules switched from non-modified adjusted gross income (MAGI) rules to MAGI rules. This corresponded to the implementation of the affordable care act. The petitioner is correct that under MAGI rules his veteran's income would not be counted when determining BC Plus eligibility. However, during the time of the overpayment the petitioner was under non-MAGI rules. Under the non-MAGI rules this income is included in determining BC Plus eligibility. See BadgerCare Plus Eligibility Handbook, § 16.2.29. Thus, the overpayment is correct.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no jurisdiction to consider the petitioner's appeal because it is untimely.

THEREFORE, it is

ORDERED

That the petition 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, 5005 University Avenue, Suite 201, 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, Madison, Wisconsin 53703, **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 Milwaukee,
Wisconsin, this 4th day of January, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 4, 2016.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability