



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/170455

PRELIMINARY RECITALS

Pursuant to a petition filed November 22, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 14, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely and, if so, whether the agency properly seeks to recover an overissuance of Medicaid benefits from the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:

Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On June 25, 2015, the agency issued a Medicaid Overpayment Notice to the Petitioner advising her that the agency intends to recover an overissuance of MA benefits in the amount of \$1,166.23 for the period of June 1, 2014 – January 31, 2015 due to the Petitioner’s failure to report when

monthly household income exceeded the program limit. The notice also advised the Petitioner of the right to request a hearing by filing an appeal with the Division of Hearings and Appeals. The notice provided the address for filing an appeal as well as the deadline for filing an appeal of August 10, 2015.

- 3. On August 12, 2015, the county agency received a fair hearing request from the Petitioner. The signature of the Petitioner is dated July 30, 2015. The agency did not forward the request to the Division of Hearings and Appeals.
- 4. On September 8, 2015, the Petitioner contacted the county agency about her appeal, was advised to contact the Division of Hearings and Appeals and was provided a telephone number.
- 5. On November 22, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

**DISCUSSION**

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of an action by a county agency concerning MA must be filed within 45 days of the date of the action. Wis. Stat, § 49.45(5).

The first evidence of Petitioner filing an appeal was a hearing request received by the county agency on August 12, 2015. Her appeal to DHA was filed on November 22, 2015. Neither appeal was received by the deadline of August 10, 2015. The Petitioner testified at the hearing that she believed she had filed her initial appeal right away after receiving the notice of overpayment. Her appeal was not signed until July 30, 2015 and was not received by any agency until August 12, 2015. Even after being advised of the proper contact information regarding the Division of Hearings and Appeals in both the notice of overpayment and in her agency contact on September 8, 2015, the Petitioner did not file her appeal with Division of Hearings and Appeals until November 22, 2015.

The Petitioner’s initial appeal sent to the county agency was filed 2 days after the appeal deadline and 48 days after the agency action. The appeal sent to DHA was filed 104 days after the appeal deadline and 150 days after the agency action. Both filings were untimely. Therefore, no jurisdiction exists for DHA to consider the merits of the case.

**CONCLUSIONS OF LAW**

The Petitioner’s appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the Petitioner’s appeal 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 17th day of February, 2016

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\sDebra Bursinger  
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 February 17, 2016.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability