



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MAC/171913

PRELIMINARY RECITALS

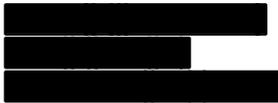
Pursuant to a petition filed February 08, 2016, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance, a hearing was held on March 01, 2016, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner’s appeal is timely as to a notice of overpayment of Medicaid benefits, whether his appeal of an Order to Compel Payment of Liability is timely and, if so, whether a prior Division of Hearings and Appeals decision is binding on this case.

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: 
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest an October 2104 notice of overissuance of Medicaid benefits and a September 30, 2015 Order to Compel Payment.

3. Petitioner was previously sent a Public Assistance Collection Unit Levy Issued notice that informed him that PACU was making collection efforts for an overpayment of \$10,504.00 of W-2 benefits. This W-2 benefit overissuance was alleged to have occurred as Petitioner and [REDACTED] were co-parents of 2 minor children, lived in the same household and the household's income was in excess of program income limits for the period of the overpayment – September 2011 through September 2013. Petitioner did appeal that Levy to the Division of Hearings and Appeals. Division of Hearings and Appeals case number LVO/157356.
4. The Division of Hearings and Appeals held a hearing on June 14, 2014 in case #LVO/157356 and issued a decision on August 26, 2014. That decision concluded that Petitioner and [REDACTED] did live together during the time period alleged. That decision was not appealed to the Circuit Court. The Decision was sent to Petitioner at the address in the caption above.
5. Petitioner was sent 2 Wisconsin Medicaid and BadgerCare Plus Overpayment Notices, both dated October 27, 2014. One informed Petitioner that he had been overissued Medicaid benefits in the amount of \$90.00 during the period from July 1, 2012 to December 31, 2012. The other informed Petitioner that he had been overissued Medicaid benefits in the amount of \$188.00 during the period from January 1, 2013 to August 31, 2013. There were both sent to an address on [REDACTED] in Milwaukee.
6. Petitioner was sent a Notice of Administrative Action and an Order to Compel Payment of Liability, dated September 20, 2015, that informed Petitioner that he must pay the \$278.00 within 30 days or a circuit court judgment would be entered against him. This was sent to Petitioner at a South [REDACTED] address in Milwaukee.
7. There is no [REDACTED] Street in Milwaukee though there is a [REDACTED]. Petitioner has his own home at the address in the caption above and has lived there through the time periods involved here.
8. This appeal was filed on March 1, 2016 via email.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. §49.45(5)(a), *Wis. Stats.* As for the Petitioner's October 29, 2014 appeal of the Notice of Administrative Action to Compel Payment dated September 24, 2014, I note that the appeal deadline is 30 days from the date of the Notice. §49.497(1r)(a), *Stats.*

These appeal deadlines presume, however, that a petitioner has been provided with an adequate and timely notice. Here the agency had Petitioner's above address as part of the hearing resolved in mid – 2014 (again, LVO/157356). It did not, however, send any of the notices involved here to that address. Those addresses were reported by [REDACTED], they are not Petitioner's address. I cannot, therefore, conclude that Petitioner received any of the notices here thus Petitioner's appeal is timely as to both the overpayment and Order to Compel.

Nonetheless, even though timely, there is no relief for Petitioner. This is because of the legal doctrines of claim preclusion (formerly known as “res judicata”) and issue preclusion (formerly known as “collateral estoppel”). Claim preclusion requires a final judgment on the merits in a prior proceeding. Issue preclusion 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." *Ibid.*, p. 550.

In this case the Medicaid \$278.00 overpayment is based on the same household composition issue as in the W-2 hearing held by the Division of Hearings and Appeals in June 2014. Petitioner argues here that he was not living with [REDACTED] and was unaware that she was receiving benefits. Nonetheless, the issue of household composition has already been decided by the Division of Hearings and Appeals and not appealed, thus the conclusion that Petitioner and [REDACTED] were in the same household is, under claim and issue preclusion, binding on this decision.

I also note that even if, however, the appeal as to the Order to Compel Payment was timely the scope of the hearing is very limited:

...The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.
§49.497(1m)(a), Stats.

Petitioner has not repaid the \$278.00 BadgerCare+/Medicaid overissuance nor has he entered into a repayment agreement.

CONCLUSIONS OF LAW

1. That Petitioner's appeal is timely as to both the original overpayment notice as well as the Order to Compel.
2. That, as the issue at this hearing was household composition, the instant appeal is precluded by the doctrines of claim preclusion and issue preclusion as the household composition issue was decided in a final decision in Division of Hearings and Appeals Case No. LVO/157356.

THEREFORE, it is

ORDERED

That this 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 27th day of April, 2016

\sDavid D. Fleming
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 April 27, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability