



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/172229

PRELIMINARY RECITALS

Pursuant to a petition filed February 23, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance (MA), a hearing was held on April 14, 2016, at Kenosha, Wisconsin.

The issue for determination is whether the petitioner’s February 2016 appeal of an October 2015 MA overpayment notice is timely.

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: 
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Kenosha County.
2. On October 15, 2015 the agency sent the petitioner a notice of medical overpayment stating that the petitioner was overpaid \$403.06 in medical benefits for the period from September 1, 2014 to January 31, 2015. The notice specifically stated that the petitioner had the right to request a fair

hearing, and that the request must be made to the Division of Hearings and Appeals by November 30, 2015.

3. When the petitioner started receiving MA/BadgerCare (BC) Plus benefits the agency sent him a notice that stated he had to report by the 10th day of the following month in which the monthly household gross income increased above \$2,572.71.
4. In June 2014 the petitioner's spouse started a new job. The overpayment was due to client error because the petitioner and his spouse failed to report a new job. With the new job the household gross income in July 2014 was \$4,227. The petitioner had until August 10th to report this increase. He never reported this increase in income and continued to receive BC Plus benefits causing an overpayment from September 1, 2014 through January 31, 2015.
5. On February 23, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning MA is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d); Wis. Stat. § 49.45(5); Wis. Admin. Code § DHS 104.01(5)(a)3; Wis. Admin. Code § HA 3.05(3). A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

In this case the notice of overpayment was sent to the petitioner on October 15, 2015. The Division of Hearings and Appeals did not receive his Request for Fair Hearing until February 23, 2016. This is well beyond the 45 day time limit to appeal. Thus, I must dismiss the petitioner's appeal for lack of jurisdiction.

Even if I had jurisdiction, I would find that the overpayment was correct. The petitioner was sent a notice stating that he had to report when her income increased above \$2,572.71. The household gross income increased above that level, and he failed to report the increase causing this overpayment. At the hearing the petitioner argued that his spouse had new insurance with her job. They believed that BC Plus would terminate with the new insurance. They did not realize that they had to report any information to the agency. This is contrary to the notice that the agency sent the petitioner.

As a point of information to the petitioner, BC Plus continued to cover as a secondary insurance through this overpayment period. If he has medical bills, those bills can be resubmitted to forward health for coverage.

CONCLUSIONS OF LAW

The petitioner's February 2016 appeal of an October 2015 MA overpayment notice is not timely.

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 17th day of May, 2016

\sCorinne Balter
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 May 17, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability