



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/172688

PRELIMINARY RECITALS

Pursuant to a petition filed March 08, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on April 14, 2016, at Appleton, Wisconsin.

The issue for determination is (1) whether the petitioner's appeal of a Medical Overpayment is timely, and (2) if timely, whether the agency correctly calculated and assessed a medical overpayment.

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: [Redacted]

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Outagamie County.
2. On November 20, 2015 and November 21, 2015 the agency sent the petitioner notices stating that she was overpaid a total of \$23,041.87 in medical benefits for the period from October 1, 2010 to May 31, 2015.

3. On March 8, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
4. In preparation for the hearing, the agency realized that two of the notices stated October 2010, when those notices should have stated December 2010. Those notices were corrected, and new notices were issued reflected the same amount, but with a new date and new claim number.
5. The petitioner's gross income in December 2010 was \$8,479.80. This was over the program limit for medical assistance benefits, and the agency correctly established an overpayment for that month.

DISCUSSION

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.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5). All negative notices sent by the agency include standard language informing recipients of how to appeal and the time limits for appeal. If the appeal is untimely the Division of Hearings and Appeals does not have jurisdiction to review its merits. There is no "good cause" exception to that time limit.

The agency sent the petitioner these overpayment notices on November 20 and November 21, 2015. The Division of Hearings and Appeals did not receive the petitioner's Request for Fair Hearing until March 8, 2016. This is well beyond the 45 day time limit for appeal. Thus, I am without jurisdiction to reach the merits of the majority of this overpayment.

At the hearing the agency testified that they corrected two overpayment notices for December 2010. Those notices reflected October 2010 when the correct month was December 2010. The notices reflected the same income and same overpayment for the correct month of December 2010. The appeal with respect to these notices is timely.

This overpayment arose because the petitioner operated an illegal [REDACTED] lottery and as well as other illegal gambling activities. The income generated from these illegal sources was never reported to the agency. The petitioner was arrested and convicted of running a gambling ring in Minnesota. As a result of that arrest, the [REDACTED] Police Department obtained a search warrant for the petitioner's home and business.

During their search, they found numerous items related to the petitioner's illegal gambling activities. The ledger book from the █████ lottery is summarized on the spreadsheet in Exhibit 39. This spreadsheet was prepared by the █████ Police Department during their investigation. This spreadsheet reflects some of the petitioner's income from her illegal activities. Using only the income on the spreadsheet from the █████ lottery the petitioner was not eligible for medical benefits during any of the overpayment months including December 2010.

CONCLUSIONS OF LAW

(1) the petitioner's appeal of all the Medical Overpayments, with the exception of December 2010, is timely, and (2) with respect to December 2010, the agency properly established overpayments in the amount of \$212.58 and \$167.84 for that month.

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.

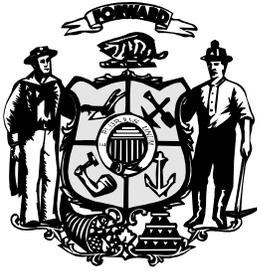
APPEAL TO COURT

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 19th day of April, 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 April 19, 2016.

Outagamie County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability