



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

LNO/173080

PRELIMINARY RECITALS

Pursuant to a petition filed March 23, 2016, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit in regard to Other, a hearing was held on April 20, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely and, if so, whether the agency properly issued a Notice of Administrative Action and Order to Compel Payment to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On February 20, 2014, the Petitioner filed an application with the agency and reported her address on  Milwaukee. She reported that she did not intend to reside in Wisconsin.

3. On February 21, 2014, the agency denied the Petitioner's application because she was not a Wisconsin resident.
4. On March 5, 2014, the agency received an alert that the Petitioner was receiving FS benefits from the State of Tennessee.
5. On March 6, 2014, the agency received a written statement from the Petitioner's grandmother that the Petitioner was residing with her on [REDACTED] Milwaukee.
6. On March 7, 2014, the agency issued a Notice of Decision to the Petitioner at her address on [REDACTED] Milwaukee informing her that she was approved to receive Wisconsin FS benefits.
7. On March 12, 2014, the Petitioner filed another application for BC+ benefits. She reported her address on [REDACTED] Milwaukee.
8. On March 19, 2014, the Petitioner contacted the agency to report that she was moving to Tennessee.
9. On March 20, 2014, the Petitioner filed a new application with the agency requesting FS and BC+ benefits and reported her address on [REDACTED] Milwaukee. The agency re-opened the Petitioner's case.
10. On March 24, 2014, the agency issued a Notice of Decision to the Petitioner on [REDACTED] Milwaukee informing her that she was approved for BC+ benefits for herself and her minor child effective May 1, 2014. The notice also advised her of the requirement to report to the agency within 10 days if she moved or had a change in address.
11. On August 28, 2014, the agency received an alert that the Petitioner received benefits from the State of Tennessee for the period of February, 2014 – July, 2014.
12. On August 29, 2014 the agency issued Medical Assistance/BadgerCare/Badger Plus Overpayment Notices and worksheets to the Petitioner at her [REDACTED] Milwaukee address informing her that the agency intends to recover a total overissuance of BC+ benefits in the amount of \$3,055.15 for the period of February 1, 2014 – June 30, 2014 due to client error based on failure to provide accurate information. The notice also informed the Petitioner of the right to appeal the agency's determination by requesting a hearing with the Division of Hearings and Appeals within 45 days of the date of the notice.
13. On September 3, 2014, the agency issued a Repayment Agreement to the Petitioner at the [REDACTED] Milwaukee address. The Petitioner did not sign the repayment agreement.
14. On September 2, 2014, the agency intercepted \$1,286 from Petitioner's taxes for repayment of the FS overissuance.
15. On October 2, 2014, November 4, 2014 and December 2, 2014, the agency issued dunning notices to the Petitioner at her address on [REDACTED] Milwaukee.
16. On February 27, 2015, the agency issued a Notice of Administrative Action and Order to Compel Payment to the Petitioner at an address on [REDACTED], Milwaukee. The notice informed her that the agency is demanding payment of an unpaid public assistance debt for an overissuance of Medical Assistance/BadgerCare/BadgerCare Plus benefits in the amount of \$3,055. The Notice advised the Petitioner of the right to appeal the Order by filing a request for a hearing within 30 days of the date of the notice. The Notice further advised the Petitioner that the only issue she may contest is the determination by the department that she has not repaid the debt or has not entered into or complied with a repayment agreement.
17. The Petitioner has not repaid any of the MA/BC+ overissuance debt.
18. On March 23, 2016, 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. With regard to a Notice of Administrative Action and Order to Compel Payment, a request for a hearing must be filed within 30 days of the date of the notice. Wis. Stats. § 49.497(1m)(a). With regard to an adverse action relating to Medicaid or BadgerCare Plus, a request for a hearing must be filed within 45 days of the date of the notice. Wis. Stats. § 49.45.

In this case, the Petitioner disputes both the Notice of Administrative Action/Order to Compel Payment as well as the overpayment action. She testified that she did not receive the notices of overpayment or Notice of Administrative Action and had no knowledge of these actions until recently. She testified that, at the time the notices were issued, she was either living in Tennessee or was incarcerated. Specifically, she testified that she was living in Tennessee from March, 2014 – June, 2014. From July, 2014 – September, 2015, she states she was incarcerated.

The Petitioner concedes that she was back and forth between Tennessee and Wisconsin in 2013 and early 2014. She stated that she moved to Tennessee in November, 2013 and opened a benefits case there. She testified that she returned to Wisconsin in February, 2014 and filed for benefits here. She decided to move back to Tennessee and did so in April, 2014. She stated that she then returned to Wisconsin in June, 2014. The evidence is consistent with the Petitioner's testimony. She filed for FS benefits in Wisconsin in February, 2014. She advised the agency that she had been receiving benefits in Tennessee. On March, 19, 2014, she advised the agency that she was returning to Tennessee. However, for an unknown reason, she filed another application with the agency on March 20, 2014 reporting her address on [REDACTED] Milwaukee. As a result, the agency issued a Notice to her at that address advising her that she would receive FS benefits effective April 1, 2014. She continued to receive FS benefits from Wisconsin through August, 2014 and the transaction history indicates she used her Wisconsin benefits in Tennessee in May, 2014. Petitioner did not report to the agency when she was incarcerated in July, 2014.

With regard to the Notice of Administrative Action, the agency did not explain or present evidence why it mailed the Notice to Petitioner at an address on [REDACTED], Milwaukee. The Petitioner's last known address according to the evidence submitted was on [REDACTED] Milwaukee. Because the evidence does not support that the agency properly mailed to the Notice of Administrative Action and Order to Compel Payment to the Petitioner at her last-known address, I conclude the Petitioner's appeal of that action is timely.

The only issue that may be appealed with regard to a Notice of Administrative Action/Order to Compel Payment is the determination by the agency that she has not repaid the debt or has not entered into or complied with a repayment agreement. There is no dispute that the Petitioner has not repaid the debt and has not entered into or complied with a repayment agreement. Therefore, the agency has the authority to compel payment of the outstanding debt.

With regard to the overpayment action, the agency properly sent the notices to the Petitioner's last known address. She did not appeal within 45 days. Therefore, I conclude the Petitioner's appeal is untimely on the overpayment action and DHA has no jurisdiction to consider the merits of the case.

## CONCLUSIONS OF LAW

1. The Petitioner's appeal is timely with regard to the Notice of Administrative Action/Order to Compel Payment because the agency did not mail the Notice to the Petitioner's last-known address of record.
2. The Petitioner did not repay any of the overissuance or enter into a repayment agreement with the agency. Therefore, the agency has the authority to compel payment of the outstanding debt.

3. The Petitioner's appeal is untimely with regard to the overpayment action.

**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**

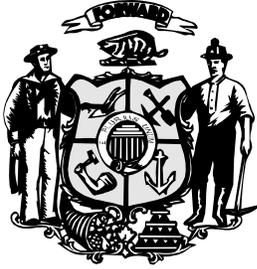
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** 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 20th day of May, 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 May 20, 2016.

Public Assistance Collection Unit  
Public Assistance Collection Unit