



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP- 173539

PRELIMINARY RECITALS

On April 6, 2016, the above petitioner filed a hearing request under Wis. Stats, §49.45(5), to challenge a decision by the Calumet County Department of Human Services regarding Medical Assistance. The hearing was held on May 17, 2016, by telephone.

The issues for determination are whether the appeal is timely and whether the elements necessary to uphold an overissuance have been proven.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services

[REDACTED]

Calumet County Department of Human
Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

David D. Fleming

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner was sent a manually generated Notice of Medicaid overpayment dated January 20, 2016. It was sent to Petitioner at the above address. It informed Petitioner that he had been overissued BadgerCare+ in the amount of \$1298.00 during the period from July 2015 through October 2015.

The notice does not contain appeal instructions but indicates they will follow in a separate notice. If that was issued it was not provided at the hearing.

3. The agency alleges an overissuance here as Petitioner did not report income in excess of the BadgerCare+ income limit.
4. This appeal was filed on April 6, 2016.

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.* This assumes, however, that a person has been provided with appeal instructions. Here, even though this appeal was filed more than 45 days after the January 20 overpayment notice, there is no subsequent notice showing that such instructions were provided to Petitioner so this decision must address the merits.

The Department may recover any overpayment of medical assistance that occurs because 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 [BadgerCare].
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.
Wis. Stat. § 49.497(1).

The overpayment may only be recovered, however, if the BadgerCare+ recipient was informed of the need to report. *BEH, §28.1.*

Here there is no Notice of Decision demonstrating that Petitioner was informed of the need to report and the reporting limit. Without such proof the overpayment cannot be upheld.

CONCLUSIONS OF LAW

1. That without proof of a notice containing appeal rights this appeal cannot be determined to be untimely.
2. That without proof that Petitioner was informed of reporting requirements a BadgerCare+ overpayment cannot be upheld.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to reverse this overpayment. It must do so within 10 days of the date of this Decision.

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, **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 6th day of July, 2016

\s _____
David 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 July 6, 2016.

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