FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/146159

PRELIMINARY RECITALS

Pursuant to a petition filed December 19, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA) overpayment, a hearing was held on May 1, 2013, by telephone. Hearings set for January 16, February 6, and March 14, 2013, were rescheduled at the petitioner's request.

The issues for determination are (1) whether petitioner's appeal was timely filed, (2) whether the Department correctly determined that the petitioner's household was overpaid MA/BadgerCare Plus benefits of $33,990.90 from February 1, 2008 through November 30, 2011. A previous Administrative Law Judge has already determined that the petitioner was overpaid for this time period; only the amount of overpayment may possibly be challenged at this time, per the doctrine of claim preclusion.

There appeared at that time the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Paul Fredrickson, IM Advanced
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. In the spring of 2012, the Department notified the petitioner that she had been overpaid BadgerCare Plus benefits totaling $37,714.46 for the February 1, 2008 through October 31, 2011, period. The petitioner appealed from that notice, and a fair hearing was held before Administrative Law Judge Bursinger of this office. On July 20, 2012, Judge Bursinger issued a decision that concluded that the petitioner had been overpaid benefits, but that the Department's case lacked clarity as to how it calculated the overpayment amount. She remanded the case to the Department with instructions to recalculate the overpayment amount and then issue a new overpayment notice to the petitioner. DHA Decision no. MOP/139513, issued July 20, 2012.

3. *Non-reporting*: Per the information in Judge Bursinger's Findings of Fact, the petitioner failed to accurately report household income throughout the overpayment period. *E.g.*, the household's eligibility was premised on reported wages of $3,700 monthly from February 2008 through at least December 2010. The notice issued to her on 2/4/08 advised that she must report within 10 days if income exceeds $4,133. The 200% Federal Poverty Level (FPL) amount for five persons was $4,133 in 2008. The household's income exceeded $4,600 from February 2008 onward, but the petitioner did not report the increase. She also did not report the increase at her renewals or Six Month Review Form filings. The applicable FPL changed to that for a household of six effective with July 2008 ($4,733), and the household's income exceeded that amount from July 2008 onward.

4. *Excess income*: Per the information in Judge Bursinger's Findings of Fact (and replicated in Exhibit 4 of this hearing record), the petitioner's household income exceeded 200% of the FPL from February 2008 through January 2009, April 2010 through December 2010, and July through October 2011. Wage information was taken from the employer's report via SWICA wage matching. When household income exceeds 200% FPL, any non-pregnant adult is not eligible for BCP, and children must pay a premium. The petitioner (not her husband) was eligible for BCP from July through December 2008, due to pregnancy.

5. *Coverage*: BCP coverage was provided to the petitioner, her husband, and their children throughout the overpayment period, *and specifically* from July through October 2008 and September 29 through December 2010, as evidenced by the Department's Individual Participation History records, found in Exhibit 6, items 4-9.

6. On September 5, 2012, the Department's agent mailed a *Medicaid/BadgerCare Overpayment Notice* to the petitioner at her correct address. The *Notice* advised that the petitioner had been overpaid $33,990.90 in BadgerCare Plus benefits during the February 1, 2008 through October 31, 2011, period. The petitioner received the Notice.

7. The difference between the overpayment challenged in #139513 and this hearing is the downward adjustment of the claim for the February 1, 2008 through January 31, 2009 period. The overpayment amount went from $9,487.60 to $5,764.04.

8. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on December 19, 2012.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed *105* days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Although the September 5, 2012 overpayment notice was sent to the petitioner's correct address, she testified that she did not receive it. However, she included a copy of it in her exhibit packet to this Administrative Law Judge, faxed on April 30, 2013. The petitioner also made the following assertions in challenging the MA overpayment claims:

> (1) She alleges that her household income did not exceed 200% FPL during the overpayment period,
> (2) She alleges that the Department of Workforce Development's state wage cross-match is in error regarding her husband's income, as allegedly rebutted by his paystubs,
> (3) She alleges that an incorrect income figure was used for her husband, in that he received wage advances in May 2011 ($3,761.29) and October 2011 ($1,214.71), which should not be counted,
> (4) She alleges that she was eligible with the higher pregnant woman's income limit from June 2008 (reported pregnancy 5/6/08) through November 2008,
> (5) She alleges that no BCP coverage was given to household members (possibly other than herself) from July through October 2008, and 9/29/10 – 12/22/10,
> (6) She alleges that household income never exceeded the reporting rules, and
> (7) She alleges that she was not credited with paid premiums in the overpayment calculation.

The petitioner's testimony/assertions as to items 1, 2, 5, and 6 are clearly wrong. This undermined her credibility. Her assertion that she did not receive the correctly-addressed September 5, 2012 notice is therefore not believable. The appeal is untimely and is dismissed.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is **ORDERED**

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of June, 2013

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\sNancy J. Gagnon
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 June 19, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability