



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/146747

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2013, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Fond du Lac County Department of Social Services in regard to interception of the petitioner's income tax refund to recover an overpayment of Medical Assistance (MA), a hearing was held on April 9, 2013, at Fond du Lac, Wisconsin. A hearing set for March 7, 2013, was rescheduled at the petitioner's request. The hearing record was held open for 7 days for a submission from the petitioner, which was received.

The issue for determination is whether the petitioner's tax interception hearing request (Medicaid overpayment) was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Deb Bohlman, ES Spec.
Fond du Lac County Department of Social Services
87 Vincent Street
Fond du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.

2. The petitioner was certified for MA and QMB from at least August 2009 through November 2009. QMB, or Qualified Medicare Beneficiary benefit, is a form of Medicare Premium Assistance that pays the recipient's Medicare Part A & B premiums.
3. On May 4, 2010, the county agency issued written notice to the petitioner advising that he had been overpaid \$587.88 in MA benefits (\$578.50 for MA, \$9.48 for two months of QMB) for the August 2009 through November 2009 period. The notice further advised that he could appeal the overpayment determination within 45 days. The petitioner did not file an appeal.
4. Following three months of nonpayment and issuance of three months' dunning letters, the Department issued a state income tax refund interception notice to the petitioner on **August 12, 2011**. The notice was sent to the petitioner's correct and last known address on file with the Department. The amount remaining for interception is \$587.88. The petitioner filed a hearing request with this Division on January 22, 2013.

DISCUSSION

Wis. Stat. §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of W-2 benefits, overissuance of food stamps, and overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

However, an interception hearing on the merits is only available if the petitioner files the hearing request within 30 days of receiving the interception notice:

(3) NOTICE REQUIREMENTS.(a) ...

2. Inform the person that he or she may appeal the determination of the department of health services to certify the amount by requesting hearing under sub.(4) within 30 days after the date of the letter and inform the person of the manner in which he or she may request a hearing.

Wis. Stat. §49.85(3)(a)2.

The petitioner should have appealed the interception action within 30 days of the August, 2011 interception notice. He does not assert that the Department has subsequently failed to credit his payment amounts (if any) against the certified amount. When a person fails to appeal a negative decision within the statutory time limits, the Division of Hearings and Appeals no longer has jurisdiction over the merits of the appeal. Because the petitioner did not request a hearing on the merits of the interception determination within 30 days of the August 2011, notice, the Division does not now have jurisdiction to

consider the merits of either the underlying overpayment determination or the interception action in the context of a tax interception appeal.

CONCLUSIONS OF LAW

1. The ALJ lacks jurisdiction to consider the merits of the petitioner's tax interception appeal, as it was not timely filed.

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 6th day of May, 2013

\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 May 6, 2013.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability