FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/146896

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on February 27, 2013, at Madison, Wisconsin. At the request of [redacted] and [redacted] each of their appeals was consolidated into one hearing.

The issue for determination is whether petitioner's appeal of the October 5, 2012 BadgerCare overpayment notice from the period of January 1, 2012 to July 31, 2012 is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Michelle Furr, overpayment specialist
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County. The petitioner is the husband of [redacted], and they have two children.

2. The petitioner received BadgerCare benefits for his family including their two children.

3. The county agency sent an October 5, 2012 BadgerCare (BC) overpayment notice to the petitioner and a separate October 5, 2012 BC overpayment notice to [redacted] stating that the household had received an overpayment of $1,303.30 during the period of January 1, 2012 to July 31, 2012, due to failure to timely report increases in earned income of both [redacted] and [redacted] which resulted in required monthly BC premiums for their two children.

4. The specific reasons for the petitioners' BC overpayment are the following: a) Mrs. [redacted] began new employment and Mr. [redacted] received increased earned income, but both failed to timely notify the county agency of such increases in household income; b) these increases in income occurred in November, 2011 and thus were required to be reported to the county agency no later than December 10, 2011; c) the increase in household income required that petitioners pay monthly BC premiums for each of their two children as of January, 2012; and d) petitioners failed to pay monthly BC premiums totaling $1,303.30 for their two children during the period of January 1, 2012 to July 31, 2012.

5. The petitioner received his October 5, 2012 BC overpayment notice.

6. The petitioner mailed an appeal to the Division of Hearings and Appeals(DHA) which was received at DHA on January 28, 2013 (no postmark was visible on the envelope).

7. There is no reliable evidence in the hearing record that petitioner requested a DHA appeal regarding his BC overpayment prior to January 28, 2013.

DISCUSSION

An Administrative Law Judge (ALJ) 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 BadgerCare or Medical Assistance (MA) must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0.** An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the October 5, 2012 BC overpayment sent to the petitioner.

During the February 27, 2013 hearing, petitioner and his wife did not dispute that each of them had received his/her BC overpayment notice stating that they had received an overpayment of $1,303.30 during the period of January 1, 2012 to July 31, 2012, due to failure to timely report increases in earned income of both [redacted] and [redacted]. There was no evidence that anyone at the county agency attempted to prevent petitioner from filing a timely appeal at DHA. Mrs. [redacted] alleged that she told some county worker on December 1, 2011 that her family no longer needed any BC for her family. However, the petitioner was unable to provide any reliable documentation or evidence of such communication. The petitioner's wife submitting to DHA some vague phone records that there was some type of communication with the county agency during that period does not establish the nature or content of that communication, or that she specifically instructed the county agency to discontinue her BC coverage for her family. Furthermore, notices to the petitioner and his wife confirmed that the family continued to receive BC coverage for their two children during the overpayment period of January, 2012 through July, 2012.

In any case, during the February 27, 2013 hearing, petitioner was unable to provide any valid reason or good cause for not filing an appeal with DHA during the 45 day period (until November 22, 2012) after receiving the October 5, 2012 overpayment notice. The petitioner explained that he did not understand the appeal process. However, such confusion does not establish good cause for a late appeal. Accordingly, for the above reasons, I must conclude that because petitioner did not appeal his October 5, 2012 BadgerCare overpayment notices within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the October 5, 2012 BC overpayment notice at issue in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the October 5, 2012 BC overpayment notice to the petitioner, as the petitioner's appeal is untimely.

THEREFORE, it is **ORDERED**

The petition for review herein be and the same is hereby 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 30th day of April, 2013

\sGary M. Wolkstein
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 April 30, 2013.

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