



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/147525

PRELIMINARY RECITALS

Pursuant to a petition filed February 19, 2013, under Wis. Stat., §49.45(5), to review a decision by the Northern Income Maintenance Consortium to recover Medical Assistance (MA), a hearing was held on April 2, 2013, by telephone.

The issue for determination is whether petitioner was overpaid MA because of incorrectly reported income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Beulah Garcia
Northern IM Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Forest County. She receives BadgerCare Plus (BC+) MA with her husband and child.
2. In January, 2012, the agency reviewed eligibility. Petitioner reported her income incorrectly. When the agency eventually discovered the error, it determined that BC+ was determined incorrectly due to income being higher than reported.

3. On November 2, 2012, the agency sent petitioner and her husband separate notices informing them that they were overpaid \$1,771 in MA payments between March and October, 2012. The notice informed them that if they disagreed with the action they could appeal within 45 days of the notice.
4. Petitioner filed this appeal on February 19, 2013.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any 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.
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.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Income Maintenance Manual, §3.3.2. Language concerning the right to appeal and the time limit is included as page two on all department notices. An MA appeal must be made in writing; it cannot be made orally unless it is then reduced to writing. Wis. Admin. Code, §HA 3.05(2)(a). The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c).

Petitioner filed this appeal 109 days after the notice, and thus it is untimely. Because it is untimely the Division of Hearings and Appeals does not have jurisdiction to review the merits of the overpayment claim, and the claim must stand. I asked petitioner and her husband why they waited to appeal, and he responded that they tried to work it out with the agency. Indeed, case notes show that there were a number of calls between petitioner and the agency after the notice went out, but there is no mention of a request for a hearing in any of the case notes. I thus cannot find that petitioner requested this hearing earlier than February 19, 2013, which was too late for this office to have jurisdiction.

I do note that during the hearing Ms. Garcia acknowledged that the calculations appear to be erroneous for the months of March through June, 2012 because petitioner was pregnant until a miscarriage in late April, 2012. The BC+ calculations are different if there is a pregnant family member, and the overpayment was not calculated with the pregnancy in mind. She agreed to recalculate the overpayment for those months. She can do so on her own volition even if the appeal was untimely.

CONCLUSIONS OF LAW

Petitioner's appeal of an MA overpayment was made untimely.

THEREFORE, it is ORDERED

That 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 17th day of April, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 17, 2013.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability