



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/147864

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 07, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on April 02, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely.

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: Dean Landvatter

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was sent an overpayment notice for the BadgerCare+/Medicaid program dated December 4, 2012. It was mailed to Petitioner at 228 Howland Avenue in Racine. It informed Petitioner that she had been overissued Medicaid benefits in the amount of \$499.50 for the period

from June 1, 2012 through October 31, 2012. The reason for the overissuance was that Petitioner had failed to report a change of residence.

3. The notice did contain appeal instructions that informed Petitioner that an appeal had to be filed within 45 days of the date of the notice.
4. Petitioner filed this appeal on March 7, 2013.

### **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.* Here it is apparent that the hearing was requested after the January 18, 2013 appeal filing deadline. Thus the appeal is untimely and the Division of Hearings and Appeals without authority to act.

Petitioner concedes that she received the notice of overissuance but that her life was hectic at that time. She was dealing with a niece who was ill and subsequently passed away. This was in Mississippi and Petitioner was living in Mississippi. (Indeed, the fact that Petitioner was living in Mississippi for an extended period was the reason for this overissuance.) Based on all the foregoing, I conclude that the Division of Hearings and Appeals does not have authority to make a determination on the merits of this matter as Petitioner did not timely file her appeal.

### **CONCLUSIONS OF LAW**

That this appeal was not timely filed thus the Division of Hearings and Appeals does not have authority to make a decision on the merits of the matter.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 Milwaukee,  
Wisconsin, this 22nd day of May, 2013

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\sDavid 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 May 22, 2013.

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