



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MTI/148006

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 2013, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on April 22, 2013, at Waupaca, Wisconsin.

The issue for determination is whether the Department correctly sought to intercept the petitioner's income tax refund to collect an overpayment of MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Chris Machamer

Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waupaca County.
2. The petitioner was certified for MA from at least June 1, 2011, through July 31, 2011. On March 3, 2012, the county agency issued written notice to the petitioner advising that he had been overpaid \$989.00 in MA benefits for the June 1, 2011, through July 31, 2011, period. The notice

further advised that he could appeal the overpayment determination within 45 days. See Exhibit 2. The petitioner did not file an appeal.

3. Following the issuance of three dunning letters, the Department issued a state income tax refund interception notice to the petitioner on December 14, 2012. On February 28, 2013, the Department issued a notice to the petitioner indicating that it would be receiving \$355.00 from petitioner's state income tax refund. Following application of that payment to the overpayment balance, the amount remaining due would be \$634.07.
4. The petitioner filed a hearing request with this Division on March 14, 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.* (emphasis added)

The petitioner had a prior opportunity for a hearing on the merits of the 2011 overpayment when he received the March 3, 2012, overpayment notice. 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. An appeal of an MA action must be filed within 45 days of the action. Wis. Stats. §49.45(5)(a). Because the petitioner did not request a hearing on the merits of the overpayment determination within 45 days of the March 3, 2012, notice, the Division does not now have jurisdiction to consider the merits of the overpayment determination in the context of a timely tax interception appeal. The petitioner received the overpayment notice, as it was sent to his correct address, and the petitioner acknowledged calling respondent about the overpayment in June of 2012. Electronic Case Comments ddated June 7, 2012 state:

[Petitioner called to ask why he got an overpayment notice. Told him it was because [AS] moved out and they had no dependent child in the home for a couple of months. He said [AS] was only at a friend's house for about a week because [AS] was mad at them. I told him it was beyond the 45 days in which he could ask for a fair hearing. He said he called the Call Center about it and they told him he needed to talk to this worker. His worker had recently left so he did not know who his worker was. Told him the record shoes he called about numerous other issues, but not fighting the OP. He said it has been too overwhelming dealing w/ [his wife's] amnesia. Advised him that he could try getting a Fair Hearing anyway and claim good cause and see if they grant it.

Exhibit 2.

Petitioner was aware of the overpayment, and did not deny receiving the notices. While I certainly empathize with his family's difficult health issues, in these circumstances, the only issue left for consideration in the tax interception appeal is whether the overpayment balance being certified for collection is the correct amount (an accounting exercise).

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 December 14, 2012, interception notice. The appeal was filed on March 14, 2013, which was 90 days after the notice. 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 December 14, 2012, 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 petitioner had a prior opportunity for a hearing on the overpayment determination, which is the basis for the tax interception action appealed from herein.
2. 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 3rd day of July, 2013

\sPeter McCombs
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 July 3, 2013.

Waupaca County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability