



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/148480

PRELIMINARY RECITALS

Pursuant to a petition filed April 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on April 24, 2013.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to hear the merits of petitioner's appeal.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Mary Donahue, ES Supervisor
Laura Middleton, ESS & Overpayment Specialist
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

OTHER PERSON PRESENT:

[REDACTED], petitioner's domestic partner

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. The following 4 MA overpayment claim have been established against petitioner for the time period February 1, 2011 to November 30, 2012 in the total amount of \$11,529.70:
 - (I) Claim Number [REDACTED] for the time period February 1, 2011 to November 30, 2011 in the amount of \$1,298.05;
 - (II) Claim Number [REDACTED] for the time period February 1, 2012 to October 31, 2012 in the amount of \$9,072.23;
 - (III) Claim Number [REDACTED] for the time period February 1, 2011 to November 30, 2011 in the amount of \$662.80; and,
 - (IV) Claim Number [REDACTED] for the time period February 1, 2012 to November 30, 2012 in the amount of \$496.62.
3. Petitioner received a manual letter notice from the County dated January 31, 2013 and entitled *Medicaid / BadgerCare Overpayment Notice* notifying him of the MA overpayment claims listed in *Findings of Fact #2*, above; the notice also notified petitioner of his right to appeal, including the 45-day time limit for filing an appeal.
4. Petitioner received a computer-generated letter notice from the County dated February 4, 2013 and entitled *Notice and Repayment Agreement for Medical Assistance/BadgerCare/BadgerCare Plus Overpayment* notifying him of the MA overpayment claims listed in *Findings of Fact #2*, above; the notice also notified petitioner of his right to appeal, including the 45-day time limit for filing an appeal.
5. Petitioner's request for a Hearing was made by way of a *Request For Fair Hearing* form dated March 27, 2013 received by the Division of Hearings and Appeals ["DHA"] on April 4, 2013 via U.S. Mail postmarked on April 3, 2013.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning MA is untimely if it is not filed with DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d) (2011); Wis. Stat. § 49.45(5) (2011-12); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (September 2001). A Hearing request that is not filed within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (September 2001).

In this case, the action being appealed by petitioner occurred, at the latest, on February 4, 2013 when the County established the overpayment claim against petitioner noted above and sent petitioner a written notice. Petitioner's request for a Hearing was not filed until April 3, 2013 (the date of the postmark). See, Wis. Admin. Code §§ HA 3.05(2)(a) & 3.05(3)(c) (September 2001). February 4, 2013 is more than 45-

days prior to April 3, 2013. Thus, petitioner's appeal is not timely and must be dismissed for lack of jurisdiction.

Petitioner testified that he did not request a Hearing sooner because he had previous obligations that overwhelmed him and he overlooked the overpayment notices. The circumstances as testified to by petitioner are unfortunate, but do not change the fact that petitioner's request for a Hearing was not filed in a timely manner.

CONCLUSIONS OF LAW

DHA has no jurisdiction to hear the merits of petitioner's appeal because petitioner did not file his appeal in a timely manner.

NOW, 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 26th day of April, 2013

\sSean P. Maloney
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 26, 2013.

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