



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/148711

PRELIMINARY RECITALS

Pursuant to a petition filed April 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rusk County Department of Social Services in regard to Medical Assistance, a hearing was held on June 26, 2013, at Ladysmith, Wisconsin.

The issue for determination is whether the county agency correctly seeks to recover a \$2,531 in medical assistance benefits her household received from June 1, 2012, through November 30, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Terry Nussberger
314 E Miner Ave
P O Box 142
Ladysmith, WI 54848-0142

Respondent:

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

By: Beulah Garcia

Rusk County Department of Social Services
Courthouse
311 Miner Avenue East, Suite C240
Ladysmith, WI 54848

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Rusk County.

2. The county agency notified the petitioner on December 17, 2012, that she must repay a \$2,531 overpayment of medical assistance received from June 1, 2012, through November 30, 2012.
3. The petitioner did not appeal the agency's decisions until April 4, 2013.

DISCUSSION

Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. The county agency notified the petitioner on December 17, 2012, that she must repay a \$2,531 overpayment of medical assistance received from June 1, 2012, through November 30, 2012. She called the agency on January 8, 2013, to discuss the appeal, and the agency sent her a form that day. She claims that she sent an appeal to the Division of Hearings and Appeals on February 11, 2013, but the Division never received this request. She called the county agency on April 4, 2013, to ask about the appeal and was told that there was no record of one being filed. She filed an appeal on April 11, 2013, or 115 days later.

The agency's burden of proof is by the preponderance of the credible evidence, which means that if its version of events is more credible than the petitioner's, I must rule in its favor. This is a much lower burden than in criminal matter, where the facts must be proved beyond a reasonable doubt, or even some civil matters, where the facts must be proved by clear and convincing evidence. I am unaware of any mail sent to the Division of Hearings and Appeals being lost. If it had been addressed improperly, it would have been returned to the petitioner, but she did not get the appeal back. She contends that she sent it to the proper address for the Division. She did not send the appeal by certified mail, so there is no way to verify her claim. Finally, I question why, if she actually sent it to the Division, she called the county agency to determine whether it had been received. Under these circumstances, I find that the preponderance of the evidence is that the petitioner did not file her claim on time and that it therefore must be dismissed.

CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner's appeal because it is untimely.

THEREFORE, it is

ORDERED

The petitioner's 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 Madison,
Wisconsin, this 18th day of July, 2013

\sMichael D. O'Brien
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 18, 2013.

Rusk County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
terry@nusslaw.com