



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/148751

PRELIMINARY RECITALS

Pursuant to a petition filed April 13, 2013, under Wis. Stat., §49.45(5), to review a decision by the Wisconsin Office of the Inspector General (OIG) to recover Medical Assistance (MA), a hearing was held on May 23, 2013, by telephone.

The issue for determination is whether petitioner's appeal was timely.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Megan Ryan, PARIS Interstate Agent

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Mississippi. She formerly resided in Milwaukee County.
2. Petitioner received BadgerCare Plus (BC+) MA while living in Wisconsin. She moved to Mississippi in February, 2012 but did not report the move to the Wisconsin agency. As a result MA continued to pay petitioner's monthly HMO capitation fees.
3. After the Wisconsin agency discovered that petitioner had moved it sent petitioner a notice informing her that she was overpaid \$2,207.38 in MA during the period April 1, 2012 through January 31, 2013. The notice was dated February 7, 2013 and petitioner received it a few days later.

4. Petitioner filed this appeal by a letter postmarked April 13, 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 testified that she appealed soon after getting the overpayment notice. However, she spoke with Ms. Ryan about the overpayment on February 13, 2013, which shows that she received the notice in the postal service's usual course of business. The notice told petitioner that she had to appeal within 45 days of the notice. The appeal was postmarked 65 days after the date of the notice and 59 days after petitioner's contact with Ms. Ryan. It thus was untimely.

Petitioner testified that she informed Ms. Ryan's supervisor that she intended to appeal. However, even if I could somehow find that to be a timely appeal despite the late date of the written appeal, I still would find that petitioner was overpaid. It is undisputed that petitioner was ineligible for Wisconsin MA after she moved to Mississippi. See Wis. Admin. Code, §DHS 103.03(3)(b) – a person must be a Wisconsin resident to receive MA in Wisconsin. It also is undisputed that petitioner did not report her move to the Wisconsin economic support agency. Petitioner testified that she thought her Mississippi worker was going to send proof of her move to Wisconsin, but that misunderstanding does not exonerate petitioner from her duty to report the change. The failure to report does not have to be intentional or fraudulent to trigger the overpayment; it can be a failure caused by an innocent misunderstanding. Thus even if petitioner's appeal were timely the overpayment still would stand.

CONCLUSIONS OF LAW

Petitioner's appeal of an MA overpayment was 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 28th day of May, 2013

\sBrian C. Schneider
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 28, 2013.

PACU - 5173
Public Assistance Collection Unit
Division of Health Care Access and Accountability