



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/150299

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the PACU - 5173 in regard to Medical Assistance, a hearing was held on July 22, 2013, at Madison, Wisconsin.

The issue for determination is whether this 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: Megan Ryan

PACU - 5173
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The Department sent two separate overpayment notices to petitioner on May 3, 2013 informing her of MA/Badgercare overpayments in the amount of 8,820.44 for the period from 5/1/12 to 4/30/13, and another for \$16,243.02 for the period from 5/1/12/to 4/30/13.
3. Petitioner filed a request for hearing on June 27, 2013.

DISCUSSION

An administrative Law judge (ALJ) or hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning Medical Assistance (MA) must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice.

In this case, the Department mailed notice of overpayment on May 3, 2013. Her appeal request was due by June 17, 2013 in order to be timely. Petitioner request was postmarked June 26, 2013 and was received at DHA on June 27. It was not timely filed. Petitioner explained at the hearing that she has ADD and has difficulty focusing. She also explained that she has difficulty focusing and that is why the request was not filed on time.

Because the request was untimely, the Division of Hearings and Appeals lacks jurisdiction to consider the merits of this matter.

CONCLUSIONS OF LAW

The appeal is not timely.

THEREFORE, it is

ORDERED

That this matter 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 6th day of September, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on September 6, 2013.

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