



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/150399

PRELIMINARY RECITALS

Pursuant to a petition filed June 27, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Monroe County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on August 12, 2013.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tom Miller

Monroe County Department of Human Services
Community Services Bldg.
14301 Cty Hwy B, Box 19
Sparta, WI 54656-4509

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.
2. On August 28, 2012, the respondent notified petitioner that it intended to terminate her BadgerCare+ benefits effective October 1, 2012, because her household income exceeded program limits.

3. Petitioner filed an appeal of the termination on September 3, 2012.
4. Following a hearing, Administrative Law Judge Ishii issued a decision dated October 19, 2012, finding that petitioner resided with [REDACTED] [REDACTED], and that her household income exceeded program limits.
5. Petitioner did not appeal ALJ Ishii's decision.
6. On December 5, 2012, the respondent issued a Medicaid/BadgerCare Overpayment Notice to the petitioner. That notice indicated that the county agency was seeking repayment of \$1,033.75 in BadgerCare+ benefit overpayments during the period of August 1, 2012, to November 30, 2012, due, in part, to petitioner's failure to report that Mr. [REDACTED] was in the home. The notice further indicated that petitioner had 45 days to file an appeal of the overpayment decision.
7. The Petitioner filed her fair hearing request with the Division of Hearings and Appeals (DHA) on June 27, 2011.

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 5, 2012, that she had received an overpayment of medical assistance, and that she had 45 days to appeal if she disagreed with this conclusion. She did not appeal until June 27, 2013, or 204 days later. Her appeal is late, and as a result the Division of Hearings and Appeals has no jurisdiction to consider it. As such, I must uphold the agency's finding that an overpayment occurred.

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 23rd day of August, 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 August 23, 2013.

Monroe County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability