



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/152938

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 16, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on November 19, 2013.

The issue for determination is whether petitioner's appeal was 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, Room 651  
Madison, Wisconsin 53703

By: Tom Miller

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.

2. The county agency notified the petitioner on August 2, 2013, that he must repay a \$2,475.89 overpayment of medical assistance - MAPP received from April 1, 2012, through December 31, 2012.
3. The petitioner did not appeal the agency's decisions until October 16, 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. There is no "good cause" exception to the time limit.

The county agency notified the petitioner on August 2, 2013, that he must repay a \$2,475.89 overpayment of medical assistance - MAPP received from April 1, 2012, through December 31, 2012. This notice was mailed to petitioner's correct address, and was not returned to the respondent as undeliverable.

Petitioner conceded that he had received some notice regarding the overpayment in July of 2013, which indicated that he would be receiving further information regarding his appeal rights and a repayment agreement. Petitioner testified that he did not receive this information until he after he received a letter from the respondent on September 4, 2013, which prompted him to call his worker in follow-up; testimony at hearing indicates that petitioner did not call the respondent about the September 4, 2013 letter until the end of September, and that the copy of the notice was subsequently sent to petitioner on September 30, 2013. Approximately two weeks later, petitioner filed the appeal. The appeal was filed 75 days after August 2, 2013, thirty days past the appeal deadline.

Petitioner's appeal is late, and as a result the Division of Hearings and Appeals has no jurisdiction to consider it, which means that it must uphold the agency's finding that an overpayment occurred.

I note to petitioner that, even if the appeal had been filed timely, his failure to notify the respondent regarding the end of his employment constitutes an error on the part of the petitioner. Petitioner noted that he suffers from a mental illness, which affects his ability to exercise proper judgment. 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 MA Handbook, § 6.2.1.1. The overpayment must be caused by the client's error.

There is no argument that an overpayment occurred here. The petitioner has attempted to establish that his worker erred in not assuming that petitioner's employment would end when he moved from Wood County to LaCrosse County. Still, petitioner acknowledged that he was aware of the requirement that he report the end of his employment. I note that the overpayment rules do not require a fraud component, i.e., a requirement that the MA recipient intentionally violate the MA rules. MA Handbook, § 6.2.1.1(a)(2). The petitioner did not report the end of his employment. That constitutes error on the part of the petitioner. The failure to report resulted in the erroneous payment of benefits on petitioner's behalf. As such, petitioner is liable for the overpayment.

### **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, Room 651, 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 December, 2013

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\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 December 26, 2013.

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