



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/152346

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 2013, under Wis. Stat. §§ 46.85, to review a decision by the Public Assistance Collection Unit (PACU) to impose a tax intercept to recover a Medical Assistance (MA) overpayment, a hearing was held on December 19, 2013, by telephone. A hearing set for November 19, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect an MA overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Michelle Koeppl
Manitowoc County Dept. of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. Petitioner formerly received BadgerCare Plus (BC+) MA as the caretaker of a minor. The agency attempted to close eligibility effective November 1, 2012. Petitioner appealed and benefits were ordered to be continued pending the decision. A fair hearing decision dated December 5, 2012 upheld the discontinuance.

3. On January 9, 2013, the county sent petitioner a notice that she was overpaid \$469 in MA in November and December, 2012 due to continued benefits pending a hearing. Petitioner did not appeal.
4. On September 13, 2013 the PACU sent petitioner a notice that it intended to intercept her state tax refunds to recover the overpayment. Petitioner filed this appeal.

DISCUSSION

If a person appeals a negative action concerning MA, benefits can be continued until a hearing decision is issued. However, if the person loses the appeal, the agency can recover the benefits paid pending the appeal: “A member may choose to continue to receive benefits pending an appeal decision. If the appeal decision is that the member was ineligible, the benefits received while awaiting the decision can be recovered.” BC+ Handbook, Appendix 28.2, no. 3.

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or *that could have been presented at a prior opportunity for hearing.*

Emphasis added. Petitioner had a prior opportunity for hearing on the merits of the overpayment when the February 4, 2013 notice was issued. That notice told her that she could appeal within 45 days. She does not get another opportunity to argue the validity of that decision here.

Petitioner was concerned that her back child support payments would be intercepted. There is no provision for intercepting child support to recover an MA overpayment.

CONCLUSIONS OF LAW

1. Petitioner was overpaid in the amount of \$469.
2. The Department may certify the sum of \$469 as an amount due and may proceed with the action to intercept petitioner's income tax refund.

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, 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 2nd day of January, 2014

\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 January 2, 2014.

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