



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/154563

PRELIMINARY RECITALS

Pursuant to a petition filed January 02, 2014, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Public Assistance Collection Unit (PACU) to utilize a tax intercept to recover a Medical Assistance (MA) overpayment, a telephone hearing was held on February 05, 2014.

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

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: Beulah Garcia

Price County Department of Social Services
PO Box 88
Normal Bldg., 104 S. Eyder Avenue, Rm. 1
Phillips, WI 54555

ADMINISTRATIVE LAW JUDGE:

Peter McCombs

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Price County.
2. The petitioner was certified for MA from at least August 1, 2012, through March 31, 2013.

3. On April 15, 2013, the respondent issued written notice to the petitioner advising that he had been overpaid \$1,261.42 in MA benefits for the August 1, 2012, through March 31, 2013, period. The notice further advised that he could appeal the overpayment determination within 45 days. See, Exhibit 3. The petitioner did not file an appeal.
4. Following the issuance of three dunning letters, the respondent issued a state income tax refund interception notice to the petitioner on December 13, 2013. Exhibit 5. The amount identified for interception is \$1,261.42. Exhibit 4.
5. The petitioner filed a hearing request on January 2, 2014.

DISCUSSION

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 W-2 benefits, overissuance of FoodShare benefits, and overpayment of Medical Assistance benefits.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her 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.

The petitioner had a prior opportunity for a hearing on the merits of the underlying overpayment following his receipt of the April 15, 2013, overpayment notice. When a person fails to appeal a negative decision within the statutory time limits, the Division of Hearings and Appeals no longer has jurisdiction over the merits of the appeal. An appeal of an MA action must be filed within 45 days of the action. Wis. Stats. §49.45(5)(a). Because the petitioner did not request a hearing on the merits of the overpayment determination within 45 days of the April 15, 2013, notice, the Division does not now have jurisdiction to consider the merits of the overpayment determination in the context of a timely tax interception appeal. In these circumstances, the only issue left for consideration in the tax interception appeal is whether the overpayment balance being certified for collection is the correct amount (an accounting exercise).

The petitioner has not established that the Department's arithmetic regarding the amount remaining for interception is incorrect. The records corroborate the respondent's testimony that no payments were ever received with regard to the overpayment. Therefore, the interception action stands.

CONCLUSIONS OF LAW

1. The petitioner had a prior opportunity for a hearing on the overpayment determination, which is the basis for the tax interception action appealed from herein.
2. The overpayment balance being certified for collection is correct.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of April, 2014

\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 April 18, 2014.

Price County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability