



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance, a hearing was held on February 27, 2014, at Waukesha, Wisconsin.

NOTE: The record was held open to allow the Office of Inspector General (OIG) to submit a Notification of FS Overissuance, claim number [REDACTED] and a Notice of Tax Intercept Dated September 13, 2013. The faxed packet has been marked as Exhibit 40 and entered into the record.

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

By: Kristine DeBlare, PARIS Agent
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On June 28, 2013, the Department of Health Services sent the Petitioner two manual notices advising him that he was overpaid Medicaid/Badgercare benefits. The first notice reflected an overpayment in the amount of \$5114.55 for Petitioner's children, for the period of September 1, 2012 and January 31, 2013. The second notice reflected an overpayment of \$913.43 for the Petitioner and his wife, for the period of September 1, 2012 and January 31, 2013. (Exhibits 14 and 15)
3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on January 15, 2014. (Exhibit 1)

DISCUSSION

A 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 MA must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application, the reduction of benefits, the termination of an ongoing case, or the recoupment of an overpayment.

In the case at hand, the date of action is June 28, 2013, the date of the overpayment notices. The Petitioner's appeal was filed on January 15, 2014, 201 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The Petitioner's wife asserts that Petitioner did not timely receive the overpayment notices and as such, could not file an appeal within 45-days of the date of the notices. The Petitioner's wife testified that the Petitioner had moved to [REDACTED] in August 2012, but she did not report this change to the agency. The Petitioner's wife further testified that her last address in Wisconsin, before moving to [REDACTED] in December 2012, was the [REDACTED] address that the agency used to notify Petitioner of the Medicaid/Badgercare overpayment. It should be noted that the [REDACTED] address is the home of Petitioner's mother-in-law and that she was collecting the mail for Petitioner and his wife. Consequently, it is found that the agency correctly sent the notice to Petitioner's last known address and it is presumed that the notice was timely received at that address. State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.W.2d 362 (1994)

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition 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

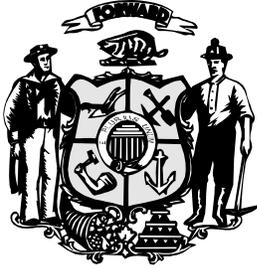
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 Milwaukee,
Wisconsin, this 11th day of March, 2014.

\sMayumi M. Ishii
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 March 11, 2014.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability