



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

SSO/154792

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on February 18, 2014, at Milwaukee, Wisconsin.

NOTE: With the Petitioner's permission, ALJ Ishii contacted [redacted] on February 18, 2014, to inquire about Petitioner's alleged overpayment. On February 19, 2014, [redacted] submitted an e-mail with a letter, an SSI enrollment print out, a payment information print out, and the Notice of State SSI and/or Caretaker Supplement Overpayment. The e-mail and attachments were marked collectively as Exhibit 5 and entered into the record. Copies will be sent to Petitioner with her decision.

[redacted] indicated that if the Social Security Administration (SSA) waived its overpayment that the Department of Health Services would follow suit. [redacted] indicated that she would be contacting the SSA on February 18, 2014 to find out what their intentions were. ALJ Ishii asked [redacted] to let her know what she found out.

As of March 31, 2014, ALJ Ishii had not heard from [redacted], so she sent another e-mail inquiring whether the overpayment was being waived, but did not receive a response. On April 9, 2014, ALJ Ishii left [redacted] a voicemail inquiring about the same, but did not receive a response. As of the date of this decision, no one from the Department of Health Services has responded to the inquiry regarding whether the overpayment was being waived.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

ADMINISTRATIVE LAW JUDGE:
 Mayumi M. Ishii
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 21, 2013, the Department of Health Services sent Petitioner a notice indicating that she had been overpaid State Social Security benefits in the amount of \$130.43 for the month of July 2013. (Exhibit 5, pg. 5)
3. Petitioner filed a request for fair hearing 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 concerning State Supplemental Security benefits must be filed within 45 days of the date of that action. *State SSI Manual §3.1.19*; Wis. Admin. Code §HA 3.05(3). A negative action can be the denial of an application, the reduction of benefits, or as in this case, the recoupment of an overpayment.

Here, the date of negative action is November 21, 2013, the date of the overpayment notice. As such, Petitioner's appeal needed to be filed by January 5, 2014. The Petitioner did not file her appeal until January 15, 2014, 55 days after the date of the action. Thus, the request for fair hearing was untimely, and no jurisdiction exists for considering the merits of the case.

If the Social Security Administration waived the federal overpayment of benefits, then the Petitioner might wish to consider contacting Ms. [REDACTED] [REDACTED] to inquire about whether the Wisconsin Department of Health Services is going to follow suit.

CONCLUSIONS OF LAW

Petitioner's appeal is untimely and there is no jurisdiction to review the merits of her appeal.

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 14th day of April, 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 April 14, 2014.

Division of Health Care Access and Accountability
State SSI