



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MTI/155033

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2014, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 26, 2014, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner’s appeal is timely to contest a Medicaid overpayment and whether the Department correctly sought to intercept Petitioner's tax refund to collect a Medicaid overpayment.

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

By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.

2. Petitioner was sent a notice dated March 4, 2013 that informed her that she had been overissued Medicaid benefits in the amount of \$4606.26 for the period from January 1, 2011 through January 31, 2012. It was sent to Petitioner at the above address and did contain appeal instructions. No appeal was filed with the Division of Hearings and Appeals.
3. Petitioner was sent a tax intercept notice dated January 17, 2014 that informed her that she had an unpaid public assistance debt of \$4606.26 and that her income taxes were subject to intercept to repay that claim. It was sent to Petitioner at the above address. She then filed this appeal.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. §49.45(5)(a), *Wis. Stats.* Here it is apparent that this hearing request was filed more than 9 months after the deadline for appealing the March 4, 2013 overpayment notice which was sent to Petitioner at the above address. Thus the appeal is untimely and the Division of Hearings and Appeals without authority to act with regard to the underlying overpayment.

The appeal is, however, timely as to the tax intercept notice as the appeal deadline is 30 days from the date of that notice. *See Wis. Stat. §49.85(3)(a)2.*

Wis. Stat., §49.85(2)(a), 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 FoodShare, and Medicaid 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 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)(a).

The hearing right is described in *Wis. Stat., §49.85(4)(a)*, 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.

As Petitioner had a prior opportunity for a hearing, i.e., the appeal right afforded by the March 4, 2013 overpayment notice, on the merits of the overpayment; she does not now have a hearing right to question the merits of the overpayment itself. Therefore, the reason that overpayment occurred cannot be reviewed at this tax intercept hearing. This leaves only the question as to the correctness of the amount of the sum certified for tax intercept and there is no evidence that calls that sum into question.

CONCLUSIONS OF LAW

1. That Petitioner's appeal is not timely as to the March 4, 2013 overpayment.
2. That there is no evidence to indicate that the sum certified to the Department of Revenue is incorrect.
3. That the Department has correctly certified a public assistance debt of overpaid Medicaid to the Wisconsin Department of Revenue for state income tax refund intercept from Petitioner.

THEREFORE, it is

ORDERED

That this 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 Milwaukee,
Wisconsin, this 9th day of May, 2014

\sDavid D. Fleming
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 May 9, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability