



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/155183

PRELIMINARY RECITALS

Pursuant to a petition filed January 30, 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 March 11, 2014, at Milwaukee, Wisconsin. The case was held open for 15 days for the agency to review information submitted at the hearing by the Petitioner. The record was closed on March 26, 2014.

The issue is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover the following claims for an overissuance of BC+ benefits:

Table with 2 columns: Claim No. and Amount. Rows include Claim No. [redacted] \$2,690.20, Claim No. [redacted] \$1,252.98, Claim No. [redacted] \$1,968.82, Claim No. [redacted] \$ 576.24

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received BC benefits for his son during the period of July 1, 2012 – December, 2013.
3. On November 8, 2013, the agency received notification that the Petitioner's son was receiving FS benefits from the State of [REDACTED].
4. On November 11, 2013, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of his son's living arrangement. The due date for the information was November 21, 2013. The Petitioner did not respond to the agency's request for verification.
5. Petitioner's son attended Milwaukee Public Schools through May, 2013 and resided with the Petitioner until sometime in June, 2013.
6. Petitioner did not report to the agency that his son moved to [REDACTED] in June, 2013. When Petitioner's son went to [REDACTED] in June, 2013, the intent was for his son to return to Wisconsin at the end of the summer. His son did not return as intended but remained in [REDACTED].
7. On December 9, 2013, the agency issued a BC+ Overpayment Notices to the Petitioner informing him that the agency intends to recover an overissuance of \$4,659.02 and \$1,829.22 for the period of July 1, 2012 to December 31, 2013 for failure to accurately report household composition. The notices also inform the Petitioner of his right to request a fair hearing within 45 days of the date of the notice.
8. On January 30, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning MA or BC+ must be filed within 45 days of the date of the action. Wis. Stats. § 49.45(5). The petitioner's appeal was filed 52 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I note as dicta that based on the information submitted by the Petitioner at the hearing, the agency has reviewed the overpayment claims and has indicated that it will adjust Claim Nos. [REDACTED] and [REDACTED] to \$0. The agency will seek to recover \$2,545.06 for the period of July 1, 2013 – December 31, 2013 for Claim Nos. [REDACTED] and [REDACTED].

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the Petitioner's 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 10th day of April, 2014

\sDebra Bursinger
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 10, 2014.

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