



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/156908

PRELIMINARY RECITALS

Pursuant to a petition filed April 14, 2014, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Brown County Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on May 20, 2014. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: FTI/156907.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to decide the merits of this matter.

There appeared at that time via telephone 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: Lisa Pryes, ESS

Diane Van Asten, Fraud Investigator Aide
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

OTHER PERSON PRESENT:

[REDACTED], petitioner's mother

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County, Wisconsin.
2. The following 3 Claims were established against petitioner for overpayments of MA for the time period March 1, 2011 to November 30, 2012 in the total amount of \$1,114.12¹:
 Claim Number [REDACTED]; March 1, 2011 to March 31, 2011; \$32.00;
 Claim Number [REDACTED]; May 1, 2011 to March 31, 2012; \$619.06; and,
 Claim Number [REDACTED]; June 1, 2012 to November 30, 2012; \$463.06.
3. The State of Wisconsin mailed a written notice to petitioner, dated January 17, 2014 and entitled *Important Notice About Your State Tax Refund and Credits*; it was mailed to petitioner's last-known address and it was received by petitioner; the written notice stated that petitioner's Wisconsin State Tax Refund may be intercepted in the total amount of \$1,114.12 to repay the MA overpayments identified in *Findings of Fact #2*, above; the written notice also notified petitioner of his appeal rights, including the 30-day time limit for requesting a Hearing.
4. Petitioner requested a Hearing concerning the MA tax intercept by a *Request For Fair Hearing* form dated April 13, 2014 and received by DHA on April 16, 2014 via U.S. Mail postmarked April 14, 2014.

DISCUSSION

An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2011-12); See also, Wis. Admin. Code § HA 3.05(3)(b) (February 2013). A Hearing request that is not made within the allowed 30 days must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the tax intercept notice is dated January 17, 2014. Petitioner's request for a Hearing was not made until April 2014. This is well outside of the allowed 30 days. Thus, petitioner's appeal is not timely and must be dismissed for lack of jurisdiction.

¹ The total of all associated overpayments is \$7,844.10 -- but petitioner is liable only for that portion of the overpayments (\$1,114.12) related to his children. Petitioner's ex-wife is liable for all the associated overpayments (\$7,844.10).

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction to decide the merits of this matter.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 4th day of June, 2014

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 4, 2014.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability