



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/157088

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a hearing was held on June 04, 2014, at Madison, Wisconsin. At the start of the June 4, 2014 hearing, both [REDACTED] and his wife, [REDACTED], agreed to a consolidated hearing for each of their appeals in Case Nos. MOP/157088 and MOP/157090.

The issue for determination is whether petitioner's appeal of the November 14, 2013 BadgerCare overpayment notice from the period of November 1, 2012 to July 31, 2013, 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: Denise Jeffers, ES Supervisor
Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Wood County and moved to Dane County where he resides with his wife, [REDACTED], and their child.

2. The petitioner received BadgerCare benefits for a household of three as of August, 2012. See Exhibit 1.
3. The county agency sent a November 14, 2013 BadgerCare (BC) overpayment notice to the petitioner stating that the household had received an overpayment of \$4,707.71 during the period of November 1, 2012 to July 31, 2013, due to failure to timely report all earned income of both [REDACTED] and [REDACTED] which resulted in household income above the BC income eligibility limits and thus ineligibility for BC benefits. That notice stated that an appeal must be filed within 45 days of the date of that November 14, 2013 decision. See Exhibit 2.
4. The petitioner and his wife received the November 14, 2013 BC overpayment notice (Exhibit 2).
5. The petitioner mailed an April 22, 2014 appeal to the Division of Hearings and Appeals (DHA) with a postmark date of April 22, 2014, which was received at DHA on April 24, 2014. See Exhibit 3.
6. There is no evidence in the hearing record that petitioner requested a DHA appeal regarding the November 14, 2013 BC overpayment notice prior to April 22, 2014.

DISCUSSION

An Administrative Law Judge (ALJ) 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 BadgerCare or Medical Assistance (MA) must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0.** An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the November 14, 2013 BC overpayment notice sent to the petitioner.

During the June 4, 2014 hearing, both petitioners admitted that they received the November 14, 2013 BC overpayment notice stating that they had received an overpayment of \$4,707.71 during the period of November 1, 2012 to July 31, 2013, due to failure to timely report all earned income of both [REDACTED] and [REDACTED] which resulted in household income above the BC income eligibility limits. Mr. and Mrs. [REDACTED] argued that they telephoned the county agency to discuss and attempt to resolve the BC overpayment notice on more than one occasion. Mr. [REDACTED] also sent a letter to the Wood County agency attempting to resolve the overpayment issue with the agency. However, there was no evidence that anyone at the county agency attempted to prevent petitioner from filing a timely appeal at DHA. The petitioners alleged in vague terms that there was some type of communication with the county agency during that overpayment period that they instructed the county agency to discontinue the BC coverage for the household. However, neither petitioner was able to provide any reliable documentation to establish that they discontinued the household's BC benefits prior to the end of the overpayment period (July 31, 2013).

In any case, during the June 4, 2014 hearing, petitioner was unable to provide any valid reason or good cause for not filing an appeal with DHA during the 45 day period after receiving the November 14, 2013 overpayment notice. In fact, Mr. [REDACTED] explained during the hearing that it was an "oversight" that he did not file a timely appeal with the Division of Hearings and Appeals (DHA). However, such oversight or attempt to informally resolve the overpayment issue with the agency did not establish good cause for a late appeal. Accordingly, for the above reasons, I must conclude that because petitioners did not appeal the November 14, 2013 BadgerCare overpayment notice within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the November 14, 2013 BC overpayment notice at issue in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the November 14, 2013 BC overpayment notice to the petitioner, as the petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

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 17th day of July, 2014

\sGary M. Wolkstein
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 July 17, 2014.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability