



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/157435

PRELIMINARY RECITALS

Pursuant to a petition filed May 6, 2014, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Public Assistance Collection Unit in regard to to intercept the petitioner’s income tax refund and apply it against a prior overpayment of Medical Assistance (MA), a hearing was held on July 16, 2014. A hearing set for June 6, 2014, was rescheduled at the petitioner’s request.

The issue for determination is whether the Department correctly sought to intercept the petitioner’s state income tax refund to collect an MA overpayment.

There appeared at that time 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: Kristine DeBlare, IRS/PARIS agent
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of Arkansas.
2. The petitioner was certified for MA/BadgerCare Plus (BCP) from at least August 2012, through April 2013.

3. On May 23, 2013, the county agency issued written notice to the petitioner advising that she had been overpaid \$2,641.53 in MA benefits for the August 2012 through April 2013, period (claims # [REDACTED], # [REDACTED]). The notice further advised that she could appeal the overpayment determination within 45 days. The petitioner did not file an appeal.
4. Following the issuance of three dunning letters, the Department issued a state income tax refund interception notice to the petitioner on January 17, 2014. The notice was sent to the petitioner's last known and correct current address on file with the Department. Exhibit 4. The amount remaining for interception is \$2,641.53. The petitioner filed a hearing request with this Division on May 6, 2014.

DISCUSSION

Wis. Stat. §49.85, 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 W-2 benefits, overissuance of food stamps, and overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Workforce Development 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).

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

However, an interception hearing on the merits is only available if the petitioner files the hearing request within **30 days** of receiving the interception notice:

(3) NOTICE REQUIREMENTS.(a)

2. Inform the person that he or she may appeal the determination of the department of health services to certify the amount by requesting hearing under sub.(4) within 30 days after the date of the letter and inform the person of the manner in which he or she may request a hearing.

Wis. Stat. §49.85(3)(a)2.

The petitioner should have appealed the interception action within 30 days of the January 2014 interception notice. She does not assert that the Department has subsequently failed to credit her payment amounts (if any) against the certified amount. When a person fails to appeal a negative decision within the statutory time limits, the Division of Hearings and Appeals no longer has jurisdiction over the merits of the appeal. Because the petitioner did not request a hearing on the merits of the interception determination within 30 days of the January 2014, notice, the Division does not now have jurisdiction to consider the merits of either the underlying overpayment determination or the interception action in the context of a tax interception appeal.

CONCLUSIONS OF LAW

1. The ALJ lacks jurisdiction to consider the merits of the petitioner’s tax interception appeal, as it was not timely filed.

THEREFORE, it is

ORDERED

That the petition is 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 Wisconsin county where the action occurred. 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 30th day of July, 2014

\sNancy J. Gagnon
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 July 30, 2014.

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