



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

MOP/160248

PRELIMINARY RECITALS

Pursuant to a petition filed August 29, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Vernon County Human Services in regard to Medical Assistance, a status conference was held on November 04, 2014. Hearings set for October 1, 2014 and November 4, 2014 were rescheduled at the request of the petitioner. The petitioner’s counsel, Attorney [Redact], withdrew as counsel for the petitioner in the instant case on November 4, 2014. The county agency’s supervisor and representative, [Redact], submitted a September 23, 2014 Motion to Dismiss for Failure to Timely Appeal to the Division of Hearings and Appeals (DHA) and to petitioner with attached Exhibits A, B and C. Petitioner did not send to DHA any response to the county agency’s Motion to Dismiss and Exhibits.

The petitioner was instructed in his hearing notice to appear at the county agency on November 4, 2014 at Viroqua, Wisconsin. Instead, petitioner appeared at the DHA in Madison, and wanted to meet directly with the ALJ while the county representative appeared by telephone. This ALJ insisted to promptly telephone ES Supervisor [Redact] to avoid any ex-parte communication by petitioner. This ALJ conducted a status conference with both parties, and instructed both parties to submit written statements whether the petitioner’s appeal was timely to create subject matter jurisdiction by DHA. Both parties submitted statements with attached documents which are received into the hearing record.

At petitioner’s request, the rescheduled telephonic hearing took place on February 12, 2015 with the Department represented by ES Supervisor [Redact], DCF senior collections supervisor [Redact], and the petitioner. At the request of the parties, the record was held open for consecutive closing arguments to be submitted to DHA (with a copy sent to the other party). During February, 2015, timely closing arguments were received from Ms. [Redact], Mr. [Redact] and Mr. [Redact] which are received into the hearing record.

The issue for determination is whether the petitioner’s August 29, 2014 appeal is timely regarding the county agency’s July 14, 2014 MA overpayment notice or prior MA overpayments related to his ex-wife’s ([Redact]) prior MA appeal and decision by ALJ Tedesco in Case No. MOP/144846.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: **Re Redact**, Supervisor, Western Region for Economic Assistance
Vernon County Human Services
318 Fairlane Drive, Suite 100
Viroqua, WI 54665-6131

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # **Redact**), **Redact Redact** (a/k/a **Redact Redact**) is a resident of Vernon County.
2. The petitioner was married to **Redact Redact Redact** during the period of January 1, 2006 to March 31, 2012. Their divorce was finalized on May 21, 2012 by the Vernon County Circuit Court.
3. The petitioner's ex-wife was the case head for her MA household consisting of herself, her husband, **Redact Redact**, and their children during the period of January 1, 2006 to March 31, 2012.
4. The petitioner received MA coverage during the period of January 1, 2006 to March 31, 2012 as the spouse of **Redact Redact** who also lived in her MA household.
5. During the overpayment period, **Redact Redact** had very significant medical issues including a heart transplant.
6. The county agency sent MA overpayment notices to **Redact Redact** that she received MA overpayment in the total amount of \$51,680.84 for the period from January 1, 2006 to March 31, 2012.
7. **Redact** and her husband, **Redact Redact**, (petitioner in this appeal), appeared and testified at a December 28, 2012 hearing before Administrative Law Judge (ALJ) John Tedesco in Case No. MOP/144846. See Motion to Dismiss, Exhibit C.
8. In his January 17, 2013 MA overpayment decision in MOP/144846, ALJ Jon Tedesco concluded that petitioner's ex-wife was overissued MA in the amount of \$51,680.84 for the period from January 1, 2006 to March 31, 2012, and dismissed petitioner's ex-wife's appeal. In that decision, the ALJ concluded that: a) **Redact Redact** failed to timely report to the county agency that her husband resided in her MA household and report his income which would have resulted in household income above the MA eligibility limits; and b) that petitioner remained married to **Redact Redact** during the entire overpayment period of January 1, 2006 to March 31, 2012, and resided with his wife during that entire overpayment period.
9. Neither petitioner nor **Redact Redact** filed any timely rehearing request or circuit court appeal of that January 17, 2013 decision.

10. The county agency's supervisor and representative, **RecRedact**, submitted to DHA (and to petitioner) a September 23, 2014 Motion to Dismiss for Failure to Timely Appeal to DHA with attached Exhibits A, B and C. Petitioner failed to submit any response to DHA. See above Preliminary Recitals.
11. DCF senior collection specialist, **Redact Redact**, sent a July 14, 2014 letter to the petitioner explaining that upon review DCF concluded that petitioner was not responsible for the benefits paid on behalf of **Redact Redact**, and he was only liable for benefits paid out on behalf of his child, **Redact**, reducing the remaining overpayment amount from \$51,162.48 to \$12,576.49.
12. The county agency sent a July 14, 2014 MA overpayment notices to **RedaRedact** indicating that his total MA overpayment was reduced from \$51,162.48 to \$12,576.49.
13. The petitioner's appeal was filed and received at the Vernon County agency on August 29, 2014. See Motion to Dismiss, Exhibit B. Petitioner's appeal was also received at DHA on August 29, 2014.
14. The petitioner was unable to submit any reliable evidence to establish that his appeal was received by DHA or by Vernon County agency prior to August 29, 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 originally the January 17, 2013 MA overpayment decision in MOP/144846. In that decision, ALJ Tedesco concluded that petitioner's wife (and himself as an adult member of that MA household) was overissued MA in the amount of \$51,680.84 for the period from January 1, 2006 to March 31, 2012, and dismissed petitioner's appeal. Petitioner failed to timely request a rehearing or to timely appeal that decision to the circuit court.

DHS is legally required to seek recovery of incorrect MA payments when a recipient engages in a misstatement or omission of fact to the MA program, which in turn gives rise to an MA overpayment:

49.497 Recovery of incorrect medical assistance pay-

ments. (1) (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s.49.665.
2. The failure of a Medical Assistance or BadgerCare recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. ***The failure of a Medical Assistance or Badger Care recipient*** or any other person responsible for giving information on the recipient's behalf ***to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits*** for the recipient's cost-sharing requirements.

(b) **The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made.** The extent of recovery is limited to the amount of the benefits incorrectly granted

...

(Emphasis added)

Wis. Stat. §49.497(1).

The petitioner questioned why DHS is pursuing the MA overpayment against him in addition to the recovery action against his ex-wife, [Redact]. During the February 12, 2015 hearing and in her closing argument, Ms. [Redact] established that petitioner is jointly and severally legally responsible for the reduced July 14, 2014 MA overpayment pursuant to §49.497(1)(b), Wis. Stats and the BadgerCare Handbook, 28.4.4, "Determining Liable Individual." Section 28.4.4 provides in pertinent part that: "If a minor received the BCP in error, make the claim against the minor's parents or legally responsible relative if the parent was living with the minor at the time of the overpayment." In this case, the petitioner was living with his child during the MA overpayment period. The petitioner was unable to provide any relevant legal authority to refute his joint and several liability for the remaining overpayment paid out on behalf of his child, [Redact]. See Finding of Fact #11 above. As a result, the Department has the legal right to pursue the MA overpayment against not just his ex-wife but also the petitioner.

During the February 12, 2015 hearing, petitioner admitted that: a) he had no evidence that he or his ex-wife had submitted any appeal of ALJ Tedesco's January 17, 2013 decision in MOP/144846; and b) that he had no evidence that he had submitted his July 14, 2014 MA reduction overpayment appeal prior to August 29, 2014 to the Vernon County agency. During the hearing, petitioner testified unconvincingly that he had "dropped off" his appeal at the Vernon County agency on August 28, 2014. However, the hearing record of petitioner's date stamped appeal indicates that petitioner submitted his appeal letter to the agency on August 29, 2014. That appeal was then forwarded to DHA which was also date stamped on August 29, 2014. The Departmental representatives testified that there is no record that petitioner filed his appeal prior to August 29, 2014.

Even though it appeared that the petitioners' appeal was untimely, this ALJ wanted for fairness to petitioner for Mr. [Redact] to have the opportunity receive an explanation (and to ask questions) as to how and why his MA overpayment had been re-calculated and reduced from \$51,162.48 to \$12,576.49. During the hearing, Ms. [Redact] provided persuasive, detailed testimony and evidence to explain that the Department correctly and accurately reduced the petitioner's remaining overpayment amount from \$51,162.48 to \$12,576.49.

Based upon a review of the entire hearing record, the petitioner did not file his appeal with DHA during the 45 day period after receiving the July 14, 2014 MA overpayment notice. The petitioner alleged unconvincingly that he had "dropped off" his appeal at the Vernon County agency on August 28, 2014, but failed to submit into the hearing record any reliable evidence to establish that he filed his appeal prior to August 29, 2014. Moreover, in his February 18, 2015 closing argument, petitioner was unable to refute the Department's strong case that his appeal was untimely. Accordingly, for the above reasons, I conclude that because petitioners did not appeal the July 14, 2014 MA overpayment notice within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address that July 14, 2014 MA overpayment notice at issue in this case.

CONCLUSIONS OF LAW

1. The petitioner's August 29, 2014 appeal is untimely regarding the county agency's July 14, 2014 MA overpayment notice or prior MA overpayments related to his ex-wife's prior MA appeal and decision by ALJ Tedesco in Case No. MOP/144846.

2. The Division of Hearings and Appeals (DHA) has no subject matter jurisdiction regarding the petitioner's August 29, 2014 MA appeal, 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 13th day of April, 2015

\sGary M. Wolkstein
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 13, 2015.

Vernon County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney Redact