



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MAC/161623

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 2014, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on January 08, 2015, at Racine, Wisconsin.

NOTE: I contacted the Petitioner on January 15, 2015, because I had noticed a defect in the Notice and Repayment Agreement for Medical Assistance / BadgerCare Plus Overpayment dated April 2, 2014, that was included as attachment A to Exhibit 2. That notice did not explain why the agency believed the Petitioner was not eligible for the \$3667.00 in benefits.

Because of that defect, I decided to schedule a hearing for February 17, 2015, to address the underlying overpayment issue. However, on January 16, 2015, Mr. Landvatter provided a copy of a document entitled Medicaid / Badgercare Overpayment Notice dated March 5, 2014, which explained the reason for the overpayment: The agency asserted that it didn't charge the Petitioner for a premium, because she under reported her income. That notice has been marked as Exhibit 4 and entered into the record.

Because it appeared that the March 5th notice provided both timely and adequate notice of the overpayment, I wrote a letter to the Petitioner on January 16, 2015, explaining the situation and gave the Petitioner until January 30, 2015, to provide a response. I also cancelled the February 17, 2015 hearing.

The Petitioner did not submit a response by the January 30, 2015, deadline.

The issue for determination is whether the Petitioner's appeal is timely filed.

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: Dean Landvatter, Fraud Coordinator
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of Tennessee. She moved to Tennessee in May 2013. She moved to a different address in Tennessee, sometime around February 2014. (Testimony of Petitioner)
2. When Petitioner moved from Wisconsin, she had her mail forwarded to Tennessee. (Testimony of Petitioner)
3. The Petitioner did not notify Racine County of her move to Tennessee. (Testimony of Petitioner)
4. On March 5, 2014, Racine County (the agency) sent the Petitioner a manual Medicaid/Badgercare Overpayment Notice, to her Racine address, indicating that she had been overpaid \$3,667.00 in benefits for the period of September 1, 2012 through April 30, 2013. The notice alleged that the Petitioner was not charged a premium, because she underreported her income. (Exhibit 4)
5. On April 2, 2014, the agency sent the Petitioner a combined notice of Medical Assistance/Badger Care Plus Overpayment and a Repayment Agreement. The notice was sent to the Petitioner at the Racine address. The notice indicated that the Petitioner was overpaid benefits in the amount of \$3,667.00 for the period of September 1, 2012 to April 30, 2013. However, the notice did not explain why the Petitioner was not eligible for those benefits. (Exhibit 2, attachment A)
6. On May 2, 2014, June 3, 2014, and July 2, 2014, the agency sent the Petitioner dunning notices (reminders) regarding the debt. These were sent to the Racine address. (Exhibit 2, attachments B, C and D)
7. Racine County did not receive any returned mail. (Testimony of Mr. Landvatter)
8. On September 24, 2014, the Public Assistance Collections Unit (PACU) sent the Petitioner a Notice of Administrative Action, Order to Compel Payment. This was sent to the Petitioner at her current address in Tennessee. (Exhibit 2, attachment E)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 31, 2014.

DISCUSSION

Following issuance of a Medical Assistance / BadgerCare+ overpayment notice, a person who then fails to enter into or adhere to a repayment agreement may be subject to an order to compel payment of that liability:

49.497(1m)(a) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. **Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after**

the date of the order. The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.

Wis. Stat. §49.497(1m)(a) *Emphasis added*

The Petitioner testified that she received notice of the overpayment in early 2014. PACU sent the notice of administrative action to the Petitioner at her address in Tennessee on September 24, 2014 and issued the order to compel payment on that same date. As such, the Petitioner needed to file her appeal by October 24, 2014. The Petitioner did not file her appeal until October 31, 2014. As such, her appeal of the order to compel is untimely.

Even, if Petitioner's appeal were timely, her appeal of the order to compel payment would still be dismissed.

Per Wis. Stat. §49.497(1m)(a), the only issues that may be addressed at a hearing regarding an order to compel are 1) whether the individual has not repaid the overpayment, 2) whether the individual has entered into a repayment agreement or 3) whether the individual has complied with the repayment agreement.

There is no dispute that the Petitioner has not made payments toward the debt. There is no dispute that Petitioner has not entered into a repayment agreement. Because there is no factual dispute that the Petitioner has not repaid the overpayment, and has not entered into a repayment agreement by the time of hearing and because there is no other matter over which this administrative law judge has jurisdiction, with regard to the order to compel payment, the Petitioner's appeal must be dismissed.

At the hearing, the Petitioner testified that she wished to contest the underlying BadgerCare+ overpayment. However, he appeal of that issue is also untimely.

An appeal of a negative action by a county agency concerning Medical Assistance/BadgerCare+ must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual §3.3.1. A negative action can be the denial of an application, the reduction of benefits, or as in this case, the recovery of an overpayment of benefits.

The overpayment notices were sent to the Petitioner in March and April 2014. Though they were sent to the Petitioner at her address in Racine, after she moved to Tennessee, it is reasonable to conclude that the Petitioner received the April 2014 BadgerCare+ overpayment notice, because she testified that she received a notice of overpayment in early 2014. In addition, the Petitioner testified that she had her mail forwarded to her in Tennessee and Mr. Landvatter testified that Racine County did not receive any returned mail.

Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, "summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage." Further, "the mailing of a letter creates a presumption that the letter was delivered and received." State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.W.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613. Here, the Petitioner has not provided sufficient evidence to overcome the presumption that she received notice of the overpayment.

The petitioner's appeal was filed in October 2014, well past the 45 day appeal deadline. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

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 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 Milwaukee,
Wisconsin, this 10th day of February, 2015.

\sMayumi M. Ishii
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 February 10, 2015.

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