



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]

DECISION

MAC/161647

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 29, 2014, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance, a hearing was scheduled for November 20, 2014. Petitioner did not appear and the Division of Hearings and Appeals dismissed the matter. Petitioner filed a rehearing request; that was granted and a hearing held on March 11, 2015, at Milwaukee, Wisconsin. The record was held open for 10 days to see if Petitioner wished to file a written response; the Division of Hearings and Appeals did not receive anything from Petitioner.

The issues for determination are whether Petitioner's appeal is timely as to a notice of overpayment of Medicaid benefits and whether her appeal of an Order to Compel Payment of Liability is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Kristine DeBlare

Public Assistance Collection Unit  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a Wisconsin Medicaid and BadgerCare Plus Overpayment Notice dated February 14, 2014 that informed Petitioner that she had been overissued Medicaid benefits in the amount of \$1216.83 during the period from October 1, 2010 through September 30, 2011. No appeal instructions were included.

3. Petitioner was sent a Notice and Repayment Agreement for Medical Assistance/BadgerCare/BadgerCare+ Overpayment dated March 4, 2014 that informed Petitioner that she had been overissued health care benefits in the amount of \$1216.83 for the period of October 1, 2010 through September 30, 2011 (Claim # [REDACTED]). The Notice does contain appeal instructions.
4. Dunning notices dated April 2, 2014, May 2, 2014 and June 3, 2014 were sent to Petitioner for the \$1216.83 overissuance.
5. Petitioner was sent a Notice of Administrative Action and an Order to Compel Payment of Liability, both dated September 24, 2014, that informed Petitioner that she must pay the \$1216.83 within 30 days or a circuit court judgment would be entered against her.
6. All of the notices referred to at Finding #s 2, 3, 4 and 5 were sent to Petitioner at 3226 N. 42<sup>nd</sup>; Petitioner moved from that address in late March 2014 after her father passed. She changed her address at the post office but not with the economic support agency though she did have an open Medicaid case.
7. This appeal was filed on October 29, 2014 (the postmark date).

### **DISCUSSION**

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. *§49.45(5)(a), Wis. Stats.* Here it is apparent that the hearing was requested well after 45 days from the date of the March 4, 2014 notice of overpayment. While Petitioner testified that she did not get the February or March 2014 notices, she was still at the 42<sup>nd</sup> Street address and though she moved at the end of March 2014 she did not change her address with economic support.

As for the Petitioner's October 29, 2014 appeal of the Notice of Administrative Action to Compel Payment dated September 24, 2014, I note that the appeal deadline is 30 days from the date of the Notice. *§49.497(1r)(a), Stats.* There is no good cause for a late appeal. Thus this appeal is untimely as to that Notice.

Even if, however, the appeal as to the Order to Compel Payment was timely the scope of the hearing is very limited:

...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.  
*§49.497(1m)(a), Stats.*

Petitioner has not repaid the \$1216.83 BadgerCare+/Medicaid overissuance nor has she entered into a repayment agreement.

### **CONCLUSIONS OF LAW**

That Petitioner's appeal is untimely as to both the original overpayment notice as well as the Order to Compel.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 3rd day of April, 2015

---

\sDavid D. Fleming  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 3, 2015.

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