



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

MOP/162140

PRELIMINARY RECITALS

Pursuant to a petition filed November 22, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Lafayette County Department of Human Services in regard to Medical Assistance, a hearing was held on February 10, 2015, at Darlington, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's liability for a medical assistance overpayment of \$871.41.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact

Respondent:

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

By: [Redacted]

Lafayette County Department of Human Services
627 Main Street
Darlington, WI 53530

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Lafayette County.
2. Petitioner had been enrolled in the BC Core plan.
3. Petitioner reapplied for MA in April 2014. Based on the application and income information provided by petitioner the petitioner was approved and enrolled. She was informed that she

needed to report if her income exceeded \$972.50 per month as a single adult. Among the documentation provided was petitioner's March paystubs which demonstrated that petitioner was below the income threshold.

4. Petitioner went over the income threshold in April and remained over the income threshold for eligibility during the remainder of the overpayment period.
5. The agency sent an overpayment notice on 10/1/14.
6. Petitioner appealed by written hearing request postmarked November 22, 2014.

DISCUSSION

Initially, I note that this appears to be an untimely request for hearing. I did not notice this at the time of hearing because the overpayment notice was provided by my request only after the hearing. Dated 10/1/14, the notice explicitly provided 45 days for the request of a hearing to DHA.

An administrative law judge (ALJ) or hearing officer 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 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. 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 10/1/14 overpayment notice.

The Deadline for filing an appeal was Monday November 17, 2014 as the 45th day was a Saturday. Petitioner's request for hearing was not filed before the 45-day deadline. I cannot claim jurisdiction.

However, even if I could rule on the merits of this case, petitioner would still lose. MA overpayment recovery is authorized by Wis. Stat., §49.497(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 Badger Care 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 or the recipient's cost-sharing requirements.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The petitioner must also pass an income test. An eligible applicant cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount is \$972.50 monthly for a household of one in 2014. *Id.*, § 50.1.

Petitioner's income went over the income limit in April and petitioner was required to report this. She should have reported by May 10 which would have terminated benefits effective June 2014. Petitioner remained ineligible until the end of September 2014.

Petitioner did not dispute the benefits received or the income she received. Petitioner conceded the fact of the overpayment but simply explained that she did not understand and was confused and did not think she had gone over the limit. Petitioner thought it unfair that the agency allowed her to get benefits for months before cutting her off. Petitioner asks for leniency.

The agency is required to recover benefits paid to a person that exceeded what they were correctly entitled to. There is some dispute in this case whether petitioner was provided with the correct reporting requirement. But, the reporting requirement of \$1,245 on page 6 of the Access application pertains to FoodShare and not to MA. The application explains that petitioner is to report "**any** changes in...[i]ncome of any household member" (see ex. #2). The fact remains that petitioner's income exceeded the eligibility threshold of 100% of the federal poverty level and she failed to report the increase in income from April onward.

CONCLUSIONS OF LAW

1. The appeal is untimely; and,
2. The agency was correct in determining liability for the overpayment in the amount of \$871.41.

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 Madison,
Wisconsin, this 9th day of April, 2015

\sJohn P. Tedesco
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 9, 2015.

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