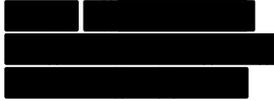




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MTI/163055

PRELIMINARY RECITALS

Pursuant to a petition filed January 3, 2015, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus, a hearing was held on February 10, 2015, at Madison, Wisconsin.

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 and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Nicole Pellerin (not appearing)
634 W Main St #202
Madison, WI 53703-2697

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Megan Thurston, Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Dane County.
2. The petitioner was certified for MA from at least March 1 through August 31, 2012.

3. On October 9, 2013, the county agency issued written notice to the petitioner advising that he had been overpaid \$1,101.00 in MA benefits for the March 1 through August 31, 2012, period (claims # [REDACTED], # [REDACTED]). The notice further advised that he could appeal the overpayment determination within 45 days. The petitioner received the notice, but 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 December 12, 2014. The petitioner received this notice. Exhibit 1. The amount for interception remains at \$1,101.00, as the petitioner has made no payments against the claim. The petitioner filed a timely hearing request with this Division regarding the interception notice.

### **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 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.*  
(emphasis added)

The petitioner had a prior opportunity to contest the merits of his MA overpayment determination. Specifically, the October 9, 2013 overpayment notice told him that he could appeal that decision to this office within 45 days of that notice. The petitioner acknowledges receipt of that notice and chose not to appeal. He testified that he was not contesting the overpayment and did not respond to the documents sent to him because he lacked the funds to make repayment.

Thus, because the petitioner had a prior opportunity to contest the overpayment, and did not do so, it shall stand. He did not contest the agency's assertion that he has not made payments toward the claim. The interception action may proceed.

### **CONCLUSIONS OF LAW**

1. The petitioner did not avail himself of his prior opportunity to contest his MA overpayment; therefore the overpayment determination stands.
2. The Department may proceed with the tax refund interception action.

**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 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 11th day of February, 2015

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\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 February 11, 2015.

Dane County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
Attorney Nicole Pellerin