



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/163096

PRELIMINARY RECITALS

Pursuant to a petition filed January 7, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on February 10, 2015. The Hearing for this matter was held at the same time as the Hearing for the following related matter concerning the same petitioner: FOP/163095.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to hear the merits of this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

BY: Laura Parsley, ESS
Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County, Wisconsin.
2. Petitioner was sent a notice dated November 8, 2014 and entitled *Wisconsin Medicaid and BadgerCare Plus Overpayment Notice*; that notice informed petitioner that she had been overpaid \$1,841.00 in MA for the time period August 1, 2013 to July 31, 2014 (Claim # [REDACTED]); the notice also informed petitioner of her appeal rights and of the process for requesting a Hearing, including the time limit for requesting a Hearing.
3. Petitioner did not request a Hearing concerning the MA overpayment until January 2015; her request for a Hearing was made by way of a *Request For Fair Hearing* form dated December 20, 2014 and received by DHA on January 9, 2015 via U.S. Mail postmarked January 7, 2015.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning MA is untimely if it is not received by DHA within 45 days of the date of the action being appealed. See, 42 C.F.R. § 431.221(d) (2015); Wis. Stat. § 49.45(5)(a) (2013-14); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (February 2013); *BadgerCare Plus Eligibility Handbook* ["BC+ Handbook"] 29.2.; *Income Maintenance Manual* ["IMM"] 3.3.2. A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the action being appealed is the November 8, 2014 notice that informed petitioner of the \$1,841.00 MA overpayment. Petitioner's request for a Hearing was not filed until January 7, 2015. See, Wis. Admin. Code § HA 3.05(3)(c) (February 2013). This is well outside of the allowable 45 days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner testified that she did not request a Hearing sooner because of the holidays and because she was going through a lot of crises. These circumstances are unfortunate, but do not create jurisdiction where none otherwise exists.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this matter.

NOW, THEREFORE, it is

ORDERED

That 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 26th day of February, 2015

\sSean P. Maloney
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 26, 2015.

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