



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/163256

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 14, 2015, under Wis. Stat., §49.45(5), to review a decision by the Northern IM Consortium to recover Medical Assistance (MA), a hearing was held on February 11, 2015, by telephone.

The issue for determination is whether petitioner's appeal of an MA overpayment was timely.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Beulah Garcia  
Northern IM Consortium  
10610 Main Street  
Hayward, WI 54843

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Lincoln County.
2. Petitioner applied for BadgerCare Plus (BC+) MA on July 19, 2013 for a household of him and his pre-school age son. BC+ was opened.
3. In October, 2013, the agency received information that the court placement order showed that petitioner had placement of his son only two days per week. The case was sent for investigation, but no investigation was done. The agency determined that petitioner's son should not have been on his case solely because of the court order, and thus there was no eligibility for BC+.

4. By a notice dated October 22, 2014, the agency informed petitioner that he was overpaid \$727.08 in MA from August 1 through November 30, 2013 because he reported incorrect household members, claim no. [REDACTED]. The notice told petitioner that he could appeal, but that he had to do so by December 8, 2014.
5. Petitioner contacted the agency on October 29 and November 19, 2014, both times disputing the overpayment. He did not specifically request an appeal, but he did say that he could prove that the child was living with him.
6. Petitioner again contacted the agency on January 8, 2014 to inquire about the status of the claim. He was told that it was too late to appeal the MA overpayment (but still timely to appeal a concurrent FoodShare overpayment because FS appeals have a longer time limit). He then filed this appeal.

### DISCUSSION

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.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Income Maintenance Manual, §3.3.2. Language concerning the right to appeal and the time limit is included on all department notices. An MA appeal must be made in writing; it cannot be made orally unless it is then reduced to writing. Wis. Admin. Code, §HA 3.05(2)(a). The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

The Income Maintenance Manual, §3.3.1, provides that when a request for hearing is made orally, the agency worker should give the person the opportunity to put the request in writing immediately. There is no affirmative duty, however, to tell the person that he must or should appeal if he disputes an action.

In this case petitioner called the agency after getting the notice and clearly disputed the claim. However, there is nothing in the record suggesting that he stated an intent to appeal, and during the hearing petitioner did not claim that he told the worker that he wanted to appeal. He instead tried to work with the agency to correct the action. The November 19 case note concluded with petitioner saying that he would get a letter from the mother to back him up. There is no suggestion that he stated that he wanted to file an appeal.

I must conclude that petitioner's appeal was untimely, as it was filed 75 days after the notice. That means that on the issue of the MA overpayment, the Division of Hearings and Appeals does not have jurisdiction to affirm or reverse the overpayment claim. I do note that in the concurrent FoodShare appeal that was filed timely, I concluded that the claim was incorrect because the child was living with petitioner during the period in question. While this office has no jurisdiction, nothing prevents the agency from amending an overpayment claim after the appeal time limit.

### CONCLUSIONS OF LAW

Petitioner's appeal of an MA overpayment was made untimely.

**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 13th day of February, 2015

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\sBrian C. Schneider  
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 13, 2015.

Lincoln County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability