



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact

DECISION

MOP/163260

PRELIMINARY RECITALS

Pursuant to a petition filed January 13, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services ["County"] in regard to Medical Assistance benefits ["MA"], a Hearing was held via telephone on March 19, 2015. At the request of petitioner a Hearing scheduled for February 19, 2015 was rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following 2 closely related matters concerning the same petitioner: FOP-163259; and, CCO-163261.

The issue for determination is whether 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:

Redact

Petitioner's Representative:

Attorney Redact
Law Office of Redact
Redact
Redact

Respondent:

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

BY: Attorney Redact
Corporation Counsel
Office of the Corporation Counsel
County of La Crosse, Wisconsin
County Administrative Center
Room 2350
400 4th Street North
La Crosse, Wisconsin
54601-3200

ADMINISTRATIVE LAW JUDGE:  
 Sean P. Maloney  
 Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [Redact]; 48 years old) is a resident of La Crosse County, Wisconsin.
2. Petitioner received, in a timely manner, a notice dated November 24, 2014 and entitled *Medicaid and BadgerCare Plus Overpayment Notice*; the notice was sent to petitioner in his own name at his address on Onalaska Avenue in LaCrosse, Wisconsin [“Onalaska address”]; that notice informed petitioner that he had been overpaid \$2,272.00 in MA for the time period March 1, 2012 to February 28, 2014 (Claim # [Redact] for \$1,075.00 & Claim # [Redact] for \$1,197.00); the notice also informed petitioner of his appeal rights and of the process for requesting a Hearing, including the time limit for requesting a Hearing. Exhibit #13.
3. On April 4, 2014 petitioner moved to the Onalaska address and in June 2014 petitioner purchased that property; CCAP records show that in April 2014 petitioner’s address was updated to the Onalaska address; the property tax bill for 2014 for the Onalaska address property was sent to petitioner at the Onalaska address; the Onalaska address remains petitioner’s current address at this time; petitioner’s paystubs from his employer use the Onalaska address going back to 2011. Exhibits #5 & #9.
4. Petitioner did not request a Hearing concerning the MA overpayment until January 13, 2015; his request for a Hearing was made by way of a letter from his attorney dated January 13, 2015 and received by DHA on January 16, 2015 via U.S. Mail postmarked January 13, 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 24, 2014 notice that informed petitioner of the \$2,272.00 MA overpayment. Petitioner's request for a Hearing was not filed until January 13, 2015. See, Wis. Admin. Code § HA 3.05(3)(c) (February 2013). This is outside of the allowable 45 days (45 days after November 24, 2014 is January 8, 2015). Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

In his January 13, 2015 letter requesting Hearing petitioner’s attorney states: “Notices were sent for my client, to his ex-girlfriend’s ex-husbands [sic] address, care of the ex-husband, who in no way is connected to my client. My client received his notices just 15 days ago, of December 30, 2014, despite an effective date of November 24, 2014 on the overpayment notice.” This statement cannot be given any weight

because it is not consistent with the evidence in the record of this matter as reflected in *Findings of Fact* #3, above.

**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 2nd day of April, 2015

---

\sSean P. Maloney  
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 2, 2015.

La Crosse County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
Attorney Redact