



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]

DECISION

MAC/163617

PRELIMINARY RECITALS

Pursuant to a petition filed January 30, 2015, under Wis. Stat., §49.497(1m)(a), to review a decision by the Public Assistance Collection Unit (PACU) to compel payment of a Medical Assistance (MA) overpayment, a hearing was held on February 19, 2015, by telephone.

The issue for determination is whether the PACU can compel payment of a public assistance debt.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted]
Portage County Dept. of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Portage County.
2. Petitioner was part of an MA household in 2013. He was incarcerated on February 4, 2013, but the incarceration was not reported. The agency learned about the incarceration in late March, 2013, and petitioner was removed from the MA household effective May 1, 2013.
3. By a notice dated June 23, 2014, the county informed petitioner that he was overpaid \$1,575.72 in MA in March and April, 2013. Petitioner did not appeal.

4. On November 13, 2014, the PACU sent an Order to Compel Payment to petitioner concerning the MA overpayment. The notice informed petitioner that he could appeal but that he had to do so within 30 days of the notice. Petitioner filed this appeal on January 30, 2015.

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); Wis. Admin. Code, §HA 3.05(3)(a). Language concerning the right to appeal and the time limit is included on all department notices. If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

Wis. Stat., §49.497(1m)(a) provides that if, after notice of incorrect payment is made, a recipient who is liable for an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment than the State of Wisconsin may bring an action to enforce the liability or may issue an order to compel payment of the liability. In this case the department has issued an order to compel payment of the liability. Petitioner can appeal, but according to the law the only issues that can be addressed are whether he paid off the overpayment, or whether he has entered into a repayment agreement and complied with it. Furthermore, the appeal must be filed within 30 days of the date of the order. Wis. Stat., §49.497(1m)(a).

Petitioner filed this appeal to contest the original overpayment, but at this point there no longer is jurisdiction to review the merits of the original overpayment. In addition, petitioner's appeal of the Order to Compel Payment also was untimely.

Out of curiosity I checked the record. Petitioner's complained that the county removed him from the FoodShare household but not the MA household. That was not the case. The county closed both programs effective May 1, 2013 because petitioner was incarcerated. April MA was provided because the county did not find out about the incarceration until late March, after the April benefits already were issued. The

overpayment was for March and April benefits because the incarceration should have been reported by February 14, 2013.

CONCLUSIONS OF LAW

Petitioner appeal of both an MA overpayment and the Order to Compel Payment of the overpayment was 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 23rd day of February, 2015

\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 23, 2015.

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