



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MOP/165228

PRELIMINARY RECITALS

Pursuant to a petition filed April 8, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Oconto County Department of Health And Human Services in regard to Medical Assistance/BadgerCare Plus, a hearing was held on May 26, 2015, by telephone. A hearing set for April 28, 2015, was rescheduled at the agency's request.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact, ES Spec.
Oconto County Department of Health And Human Services
501 Park Avenue
Oconto, WI 54153-1612

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is now a resident of Missouri; she formerly lived in Wisconsin.
2. On February 11, 2015, the Department mailed a written notice of negative action to the petitioner - Medical Assistance.../BadgerCarePlus Overpayment Notice. It was mailed to the petitioner's

last known (and correct at the time) address in Atlanta, Georgia; it was not returned by the Postal Service as undelivered. The *Notice* identified the 45-day time limit for filing a hearing request to challenge the overpayment identified therein.

3. The negative action in this case was a determination of a BCP overpayment totaling \$3,677.24.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on April 8, 2015.
5. The petitioner or petitioner's spouse attempted to telephone agency worker M. **Redact** on February 20, 2015, following receipt of the *Notice*. **Redact**'s direct line is (920)-834-7029; the petitioner's telephone records show that a call was placed on February 20 to (920)-834-7028. The parties agree that a conversation between **Redact** and the petitioner or petitioner's spouse did not occur on February 20, 2015.

### DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 56 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The petitioner asserted that she delayed filing her appeal because she was awaiting a call-back from Ms. **Redact** in response to a telephone voicemail message she left with the agency on February 20, 2015. The parties agree that there was not a conversation on February 20. Leaving a message does not satisfy the federal requirements for filing a Medicaid/BCP hearing request. *See* also, Wis. Admin. Code ch. HA 3. The request must be in writing. The only theory that this veteran Judge could concoct to make this appeal timely would be to conclude that the running of the 45-day period was tolled by an act of active misleading by the agency—*i.e.*, a conversation occurred in which the agency actively misled the petitioner by telling her not to file a written appeal with this office. Because no conversation occurred, it was impossible for the agency to have actively misled the petitioner as to the filing requirements.

### CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

**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 29th day of May, 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 May 29, 2015.

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