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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/165977

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 11, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on June 18, 2015, at Kenosha, Wisconsin.

Note: The record was held open for two weeks until July 2, 2015 to give the parties an opportunity to supplement the record. Later in the day on June 18, 2015, the agency submitted a packet that included:

- A healthcare renewal received 2/23/11
- EVFE received 3/10/11
- Renewal Notice 12/12/11
- EVFE 11/19/12
- EVFE 12/04/12
- Check stubs received 3/19/13
- Check stubs received 4/08/04
- Case Comments 2011 to present

The agency's packet has been marked as Exhibit 13 and accepted into the record.

On July 2, 2015, the Petitioner submitted a 20 page fax with her pay records. It has been marked as Exhibit 14 and entered into the record. A copy of the Exhibit 14 was forwarded to the agency for its review.

The issue for determination is whether the Petitioner's appeal is timely.

There appeared at that time and place 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: Jelena Jones, Economic Support Fraud Specialist  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On February 23, 2011, the Petitioner submitted a renewal, in which she reported no changes in income. (Exhibit 13, pgs. 2-6)
3. On March 10, 2011, the Petitioner submitted an Employer Verification of Earnings (EVFE) form from [REDACTED], indicating that she worked 5-20 hours per week, earning \$9.00 an hour and that she received no other income. (Exhibit 13, pg. 7)
4. In December 2011, the agency administratively renewed the Petitioner's healthcare benefits. Notice of the renewal was sent to the Petitioner on December 12, 2011 and instructed her to report any changes in income. (Exhibit 13, pgs. 8-9)
5. On November 19, 2012, the Petitioner provided the agency with an EVFE from [REDACTED], [REDACTED], indicating that the Petitioner worked 20-30 hours per week, earning \$20.00 per hour. No other pay is noted. (Exhibit 13, pg. 10)
6. On December 4, 2012, the Petitioner provided the agency with an EVFE from [REDACTED], indicating that she worked 18-25 hours per week, earning \$20.00 per hour and that she received holiday pay for Christmas, working 8 hours at \$20.00 per hour. (Exhibit 13, pg. 11)
7. On March 19, 2013, the Petitioner provided the agency with two paystubs, one dated February 20, 2013 and one dated March 6, 2013. Those paystubs show that the Petitioner received holiday pay at some point. They also show vacation and sick leave that is available. (Exhibit 13, pgs. 12-13)
8. On December 18, 2013, the Petitioner completed a renewal, in which she reported receiving regular pay, \$20.00 per hour for 39.17 hours per week. She also reported receiving child support irregularly. (Exhibit 13, pgs. 15-18)
9. On that same date, the Petitioner provided the agency with pay stubs that again showed that she had been receiving vacation pay, holiday pay and sick pay over the course of the year. (Exhibit 13, pgs. 19-20)
10. On April 8, 2014, the Petitioner provided the agency with additional pay stubs, which again showed she received vacation pay, holiday pay and the availability of sick time. (Exhibit 13, pgs. 21-22)
11. On March 9, 2015, the agency sent the Petitioner five notices of Medical Assistance / BadgerCare / BadgerCare Plus Overpayment Notices:
  - a. Claim [REDACTED], indicating that Petitioner was overpaid benefits in the amount of \$896.26 for the period of July 1, 2012 to December 31, 2012.

This overpayment consists of the premiums that the adults would have had to pay between July 1, 2012 to December 31, 2012. (Exhibit 7; Testimony of Ms. Jones)

- b. Claim [REDACTED], indicating that the Petitioner was overpaid \$10.00 for the period of December 1, 2012 to December 31, 2012.

This was a premium for the children. (Exhibit 8, Testimony of Ms. Jones)

- c. Claim [REDACTED], indicating the Petitioner was overpaid benefits in the amount of \$522.56 for the period of July 1, 2013 to December 31, 2013.

This overpayment consists of premiums due for the months of July through November and a capitation rate for the month of December 2013. (Testimony of Ms. Jones; Exhibit 9)

- d. Claim [REDACTED], indicating the Petitioner was overpaid benefits in the amount of \$68.00 for the period of December 1, 2013 through December 31, 2013.

This was for a premium due for Petitioner's child. (Testimony of Ms. Jones; Exhibit 10)

- e. Claim number [REDACTED], indicating the Petitioner was overpaid benefits in the amount of \$1,648.00 for the period of September 1, 2014 through December 31, 2014.

This is for premiums due during the time in question. (Testimony of Ms. Jones; Exhibit 11)

12. The Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on May 11, 2015. (Exhibit 1)

### DISCUSSION

An "overpayment" occurs when BadgerCare+ benefits are paid for someone who was not eligible for them, or when BadgerCare+ payments are made in an incorrect amount. Some examples of how overpayments occur are concealing or not reporting income, failure to report a change in income, and/or providing misinformation at the time of [application](#) regarding any information that would affect eligibility. *Wis. Stat. § 49.497; BadgerCare+ Eligibility Handbook (BEH) § 28.1.*

The agency is required to initiate recovery of BC+ overpayments, if the incorrect payment resulted from applicant/member error; fraud/intentional program violation or member loss of an appeal. *BEH+ §28.2*

Per BEH+ §28.3, overpayments **may not** be recovered under the following circumstances:

1. The member reported the change timely, but the case could not be closed or the benefit reduced due to the 10-day notice requirement.
2. Agency error (keying error, math error, failure to act on a reported change, etc).
3. Normal prospective budgeting projections based on best available information.

However, 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.

In the case at hand, the date of action was March 9, 2015, the date of the overpayment notices. The Petitioner filed her appeal on May 11, 2015, 63 days after the date of action. Consequently, her appeal is untimely and there is no jurisdiction to consider the merits of her appeal.

If I did have jurisdiction, I would direct the agency to review its overpayment determination. The agency asserts that the Petitioner was overpaid benefits, because she failed to report holiday pay, sick pay and vacation pay. However, the agency was made aware, since the December 2012 EVFE, that the Petitioner received holiday pay. In addition, since March 2013, the agency was made aware, via Petitioner's paystubs, that the Petitioner was eligible to receive paid sick time and vacation time, in addition to holiday pay. Indeed, there would be no reason to track such things on the Petitioner's paystubs, if she were not getting paid time off, and her paystubs do, in fact, reflect year-to-date totals for her additional pay.

Upon receiving information that the Petitioner was eligible for additional pay, the agency was required under *BEH §9.9* to obtain verification of the amount and frequency with which the Petitioner received such pay, because verification of income is mandatory. The paystubs raise questions regarding whether the Petitioner was eligible for a set number of hours of holiday, sick and vacation pay and how much she was paid. There is no indication in the record that agency requested verification of this information.

Thus, while there might be an overpayment of benefits, the recoverable amount might not be as high as the agency initially determined. As a side note, the agency has additional income verification from the Petitioner's employer, Exhibit 14, which might clarify things.

Because I do not have authority to order the agency to review its overpayment determination, due the untimeliness of Petitioner's appeal, the decision to take corrective action is left to the discretion of the agency. The Petitioner may also seek relief from the circuit court, as administrative law judges do not possess equitable authority, but circuit courts do.

### **CONCLUSIONS OF LAW**

Petitioner's 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 Milwaukee,  
Wisconsin, this 3rd day of July, 2015.

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\sMayumi M. Ishii  
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 July 3, 2015.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability