



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MTI/166021

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed May 15, 2015, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Ashland County Department of Human Services in regard to Medical Assistance, a hearing was held on June 18, 2015, at Ashland, Wisconsin.

The issue for determination is whether the county agency may intercept the petitioner's income tax refund to recover an overpayment of medical assistance.

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: Beulah Garcia

Ashland County Department of Human Services  
630 Sanborn Avenue  
Ashland, WI 54806

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of the state of Washington.
2. The petitioner receives approximately \$1,000 per month in per capita payments from her tribe. She did not report these when seeking medical assistance benefits.

3. The county agency notified the petitioner on July 11, 2014, that she must repay \$544 of the medical assistance benefits she received from December 1, 2009, through July 31, 2010. She did not appeal this finding.
4. The petitioner has repaid \$190 of her overpayment since September 26, 2014.
5. The county agency notified the petitioner on May 15, 2015, that it would recover the overpayment by intercepting her state income tax refund.
6. The Department of Health Services has not obtained a judgment against the petitioner in accordance with in Wis. Stat. § 49.497(1m)(b).

### **DISCUSSION**

Under certain circumstances, the department may recover a medical assistance overpayment by intercepting a person's state income tax refund. The county notified the petitioner on July 11, 2014, that it had determined that it would attempt to recover \$544 medical assistance overpayment it claimed she received from December 1, 2009, through July 31, 2010. It made this claim pursuant to Wis. Stat. § 49.497. Because she did not appeal this claim within 45 days, it must be considered valid. *See* Wis. Admin. Code, § HA 3.05(3). She has repaid \$190 of the claim since September 26, 2014, but the department now seeks to recover the rest by intercepting her state income tax refund.

The way a tax intercept works is that if the county agency determines one of its recipients has received an overpayment of medical assistance, it must notify the Department of Health Services of this. Wis. Stat. § 49.85(1). For most types of overpayment of benefits, once the relevant department has determined an overpayment has occurred, it can certify the amount that can be recovered to the Department of Revenue as long as it has properly notified the recipient of its action and the overpayment determination either has not been or no longer can be appealed. Wis. Stat. § 49.85(2)(a). This must be done once a year. But before medical assistance overpayments established under Wis. Stat. § 49.497 can be certified to the Department of Revenue, DHS must not only establish that it has properly notified the recipient and that the recipient no longer has a right to appeal the underlying claim, but it must also establish that the overpayment "determination was rendered to a judgment under s. 49.497(1m)(b)." *See* Wis. Stat. § 49.85(2)(a)3.

To obtain the judgment referred to in § 49.497(1m)(b), DHS must first obtain an order to compel payment under ch. 227 against someone who has not repaid a medical assistance overpayment or complied with a repayment agreement. Wis. Stat., § 49.497(1m)(a). If a recipient then fails to pay what is due under the order, the department can go into circuit court, which can render a judgment on the order without notifying the recipient. Wis. Stat. § 49.497(1m)(b).

The county agency presented no evidence that the department has obtained this judgment against the petitioner. Therefore, it cannot recover her medical assistance overpayment by intercepting her income tax refund.

### **CONCLUSIONS OF LAW**

The department cannot intercept the petitioner's state income tax refund to recover her overpayment of medical assistance because its overpayment determination has not been rendered to an order to compel and judgment under Wis. Stat. § 49.497(1m)(b).

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency and Wisconsin Department of Health Services with instructions that within 10 days of the date of this decision they discontinue their efforts intercept the

petitioner's state income tax refund to recover an overpayment of medical assistance. Nothing in this order prevents the department from taking steps to intercept her future tax refunds if it renders the overpayment to an order to compel and judgment under Wis. Stat. § 49.497(1m)(b).

### **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 6th day of July, 2015

---

\sMichael D. O'Brien  
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 July 6, 2015.

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