



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MTI/166289

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 28, 2015, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on August 13, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly issued a tax intercept to the Petitioner for an unpaid public assistance debt of \$875.

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: Katherine May  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In or about March, 2014, the agency notified the Petitioner that her BadgerCare Plus (BC+) benefits would be discontinued April 30, 2014 due to household income in excess of the program limit. The Petitioner filed a timely appeal of this determination with the Division of Hearings and Appeals.

Appeals on March 26, 2014 and requested that her benefits be continued pending the appeal decision. The matter was designated as DHA Case No. BCS/156403. On April 18, 2014, the Petitioner withdrew her request for a hearing and on April 18, 2014, the Division of Hearings and Appeals issued an order of dismissal of Case No. BCS/156403 based on the Petitioner's withdrawal. Nonetheless, the agency continued the Petitioner's BC+ benefits for the month of May, 2014.

3. As a result of the continuation of benefits for May, 2014, the agency established an overpayment and issued a notice of overpayment to the Petitioner on June 30, 2014 informing her that the agency intended to recover an overissuance of BC+ benefits in the amount of \$875. The notice also informed the Petitioner of the right to appeal the overpayment determination by filing a request for a hearing with the Division of Hearings and Appeals within 45 days of the date of the notice.
4. On July 2, 2014, the agency issued a repayment agreement to the Petitioner. On August 4, 2014, September 3, 2014 and October 2, 2014, the agency issued dunning notices to the Petitioner.
5. On November 13, 2014, the agency issued an Order to Compel Payment of Liability to the Petitioner. On December 17, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals. The matter was designated as DHA Case No. MAC/162695.
6. A hearing was held in Case No. MAC/162695 on January 21, 2015. The ALJ found that the Petitioner had not made any payments toward her unpaid public assistance debt of \$875. The ALJ further noted that the Petitioner had not filed a timely appeal of the June 30, 2014 overpayment notice and therefore could not, as part of MAC/162695, raise the issue of whether she was responsible for the debt. The ALJ found there was no issue for her to decide and dismissed the Petitioner's appeal.
7. On May 15, 2015, the agency issued a state tax intercept notice to the Petitioner informing her that the agency intends to intercept any state tax refunds or credits due to the Petitioner as a result of an unpaid public assistance debt in the amount of \$875.
8. On May 28, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

At the hearing in this matter, the Petitioner continues to dispute her liability for the underlying overpayment of \$875. She asserts that, because she withdrew her request for a hearing in April, 2014, the agency should not have continued her benefits in May, 2014. She testified that she was not aware that her benefits had been continued and that the continuation of benefits is an agency error for which she is not liable. In addition to disputing her liability for any part of the overpayment, she further disputes the amount of the overpayment.

At the hearing, the agency was asked to produce the original overpayment and worksheets to provide information regarding how the agency calculated the overpayment. Post-hearing, the agency notified the undersigned ALJ that the agency erred in calculating the amount of the overpayment.

As a result of the error the agency concedes in calculating the overpayment, I conclude that the agency did not properly issue a tax intercept to the Petitioner in the amount of \$875 and the agency may not take any action to collect \$875 from the Petitioner for an alleged overpayment of BC+ benefits for May, 2014. If the agency continues to assert that the Petitioner has an overpayment for the month of May, 2014, it must establish a new claim and issue a new notice of overpayment to the Petitioner with worksheets demonstrating how it determined the amount of the overpayment. Any new notice issued must provide the Petitioner with a right to appeal the agency's determination. The Petitioner must file a new appeal

with the Division of Hearings and Appeals within 45 days of the date of the overpayment if she disputes the agency's determination.

I note that if there is a new overpayment action and appeal, I have asked to be assigned as the ALJ to any new appeal for purposes of efficiency and economy to reduce the amount of time involved in re-hearing a new overpayment action.

### **CONCLUSIONS OF LAW**

The agency did not properly issue a tax intercept notice to the Petitioner for \$875.

**THEREFORE, it is** **ORDERED**

That this matter is remanded to the agency with orders to cease and desist from taking any action to collect \$875 from the Petitioner for an alleged overpayment of BC+ benefits for May, 2014. The agency is ordered to rescind its May 15, 2015 tax intercept notice to the Petitioner. These actions must be taken within 10 days of the date of this decision.

If the agency continues to assert that there is an overpayment of benefits to the Petitioner for May, 2014, it must establish a new claim and issue a new notice of overpayment to the Petitioner with worksheets demonstrating how it calculated the overpayment. The notice must contain new appeal rights for the Petitioner.

### **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**

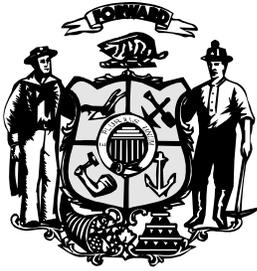
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 17th day of August, 2015

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\sDebra Bursinger  
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 August 17, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability