



FH

[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed September 1, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Clark County Department of Social Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on October 20, 2015, by telephone.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED], ES Spec.
Western Region Consortium
c/o LaCrosse County Department of Human Services
LaCrosse, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Clark County.
2. The petitioner was covered by BCP as a household of one person from July 1, 2014 through May 31, 2015. He entered the Clark County Jail on January 28, 2015, and has been continuously incarcerated since that date. Thus, he became ineligible for BCP (due to incarceration) and should

have reported that fact to the Department in February, which in turn should have resulted in his BCP case being closed effective March 1, 2015. The notice mailed to the petitioner's correct address on September 16, 2014, advised the petitioner that he needed to report to the Department within 10 days if he had "a change in where he or she is staying." See, Exhibit 4. Similarly, the application form that he signed advised of the 10 day reporting requirement.

3. The petitioner did not report to the Department that he was incarcerated until July 2015; the Department learned of his jailing through a computerized cross-match with the Department of Corrections on April 20, 2015. The Department then closed his BCP case. During the March through May 2015 period, the BCP program paid monthly HMO capitation fees for the petitioner totaling \$1,047.72. See, Exhibit 2.
4. On June 9, 2015, the Department mailed a *Wisconsin Medicaid and BadgerCare Plus Overpayment Notice (Notice)* to the petitioner at this address: [REDACTED]. The *Notice* advised the petitioner that he had been overpaid \$1,047 in BCP benefits for the March 1 – May 31, 2015 period, due to his own error (non-reporting). The *Notice* also advised of the 45-day limit for filing an appeal.
5. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on September 1, 2015.
6. Per the petitioner's testimony, he was confined in the Clark County Jail from January – March 23, 2015. He then stayed at the Dodge correctional facility from March 24 – June 4. He was incarcerated at the Stanley correctional facility from June 4 – June 23, 2015. He has been at the McNaughton correctional facility from June 24, 2015 through the date of hearing.

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 the Department concerning MA/BadgerCare Plus must be filed within **45** days of the date of the action. Wis. Stat. § 49.45(5); *Income Maintenance Manual* § 3.3.1. A negative action can be the denial of an application, the reduction or termination of an ongoing case, or an overpayment determination. The petitioner's appeal was filed **84** days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The petitioner argued, among other things, that the 45-day appeal "clock" should not run here because he did not timely receive his overpayment notice. However, the notice was addressed to the correct facility for its June 9 mailing date, and there is no evidence that the mail was returned to the Department as undelivered. Thus, his assertion of non-receipt of the mailed notice was not credible.

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.

[REDACTED]

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 20th day of November, 2015

\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 November 20, 2015.

Clark County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability