



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/168671

PRELIMINARY RECITALS

Pursuant to a petition filed September 14, 2015, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on October 14, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the petitioner's September 2015 appeal of February 2015 tax intercept notice 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: Jeannie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On April 30, 2014 the agency processed Medical Assistance (MA) overpayment claim numbers [REDACTED] and [REDACTED]. The total due for both claim numbers was \$1,240.73.

3. On January 22, 2015 Winnebago County Circuit Court issued a judgment against the petitioner in the amount of \$1,240.78 for this MA Overpayment.
4. On February 13, 2015 the agency sent the petitioner a notice of tax intercept stating that \$717.78 was due for overpayment claim numbers [REDACTED] and [REDACTED], and that it intended to intercept her state tax refund to recover the overpayment.
5. On September 14, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal concerning a MA tax intercept is untimely if it is not received by DHA within 30 days of the notice of tax intercept. Wis. Stat. § 49.85(3)(b)(2); Wis. Admin. Code § HA 3.05(3). A Hearing request that is not received within the 30-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

In this case the Department sent the petitioner a notice of tax intercept in February 2015. The Division of Hearings and Appeals did not receive the petitioner's Request for Fair Hearing until September 2015. This is well beyond the 30 day time limit, and I am without jurisdiction to hear the petitioner's appeal on her tax intercept.

I further note that even if I had jurisdiction over the tax intercept issue, the petitioner filed her appeal to dispute the underlying overpayment. Wis. Stat §49.85(4)(a) limits "the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing." The time to address the underlying overpayment was at the time of the original notice not in September 2015. For these reasons, I am without jurisdiction, and must dismiss the petitioner's appeal.

CONCLUSIONS OF LAW

The petitioner's September 2015 appeal of February 2015 tax intercept notice is timely.

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 2nd day of November, 2015

\sCorinne Balter
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 2, 2015.

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