



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 2015, under Wis. Stat., §49.45(5), to review a decision by the Rock County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on October 15, 2015, by telephone.

The issue for determination is whether petitioner’s appeal of an MA overpayment was timely.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner applied for federal marketplace insurance on December 9, 2013, noting that he was the tax filer for his two children. The marketplace transferred the application to the state MA agency because it determined that petitioner was eligible for MA under the BadgerCare Plus (BC+) program.
3. Petitioner was granted BC+ under the program’s childless adult provisions. His daughters were not included in the BC+ eligibility determination but were considered part of petitioner’s

[REDACTED]

household for determining his financial eligibility. In late September, 2014 the county discovered that petitioner would not claim his daughter's as tax dependents in 2014, and petitioner's BC+ closed effective November 1, 2014.

4. On May 8, 2015, the county notified petitioner that he was overpaid MA totaling \$854.14 in September and October, 2014, claim no. 2900433642. The claim was for HMO capitation fees paid by MA in those months. The notice informed petitioner that if he wanted to appeal the claim, he could do so with a deadline of June 22, 2015.
5. Petitioner filed this appeal on September 9, 2015.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a). Language concerning the right to appeal and the time limit is included on all department notices. An MA appeal must be made in writing; it cannot be made orally unless it is then reduced to writing. Wis. Admin. Code, §HA 3.05(2)(a). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

Petitioner filed this appeal after the deadline, and thus this office cannot make a determination on the merits. Because it is untimely, the overpayment now is valid and can be collected. Petitioner noted that he called the agency on June 17, 2015. The message he left that day did not mention an appeal, however; he simply asked if he would receive a bill to repay the overpayment.

[REDACTED]

Petitioner also said that he never applied for BC+ or even knew he was receiving BC+. The first is true; petitioner applied for the federal marketplace insurance, and it was that agency that forwarded his application to Rock County. However, I looked in the computer record, and on March 3, 2014, the agency sent petitioner a notice to the same address he uses now that informed him he was eligible for BC+ with no premium. It is possible he paid no attention to the notice because he was not expecting it. In the end, I must conclude that the overpayment claim was correct because petitioner did not appeal it timely.

CONCLUSIONS OF LAW

Petitioner's appeal of an MA overpayment claim was untimely.

THEREFORE, it is **ORDERED**

That the petition for review is hereby 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 Madison,
Wisconsin, this 19th day of October, 2015

\sBrian C. Schneider
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 October 19, 2015.

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