



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/170707

PRELIMINARY RECITALS

Pursuant to a petition filed December 8, 2015, under Wis. Stat., §49.45(5), to review a decision by the Office of the Inspector General (OIG) to recover Medical Assistance (MA), a hearing was held on January 13, 2016, by telephone.

The issue for determination is whether the petitioner's appeal of an MA overpayment was untimely.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Minnesota. She resided in Polk County, Wisconsin in December, 2014.
2. Petitioner applied for BadgerCare Plus (BC+) MA for her and her son on December 1, 2014. On January 2, 2015 the agency issued a notice to the address listed on the application telling for that she was eligible for BC+ effective December 1, 2014.
3. Petitioner moved to Minnesota. She did not notify the BC+ agency about the move. She applied for MA in Minnesota in April, 2015.

4. By a notice dated October 9, 2015, sent to petitioner's current Minnesota address, the OIG notified petitioner that she was overpaid \$418.30 in MA from June 1 through October 31, 2015, claim no. [REDACTED]. The overpayment was for monthly HMO capitation fees paid by MA on petitioner's behalf. The notice informed petitioner that if she disagreed with the action she could appeal by November 23, 2015.
5. Petitioner filed this appeal on December 8, 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. The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

The first issue is whether petitioner's appeal of the overpayment claim was timely. Petitioner testified that she had health concerns including depression to explain the lag between receiving the notice and filing the appeal. However, a time limit for appealing is mandatory to give this office jurisdiction. There is no good cause basis for extending the time limit unless the agency's notice was inadequate. Here the overpayment notice was adequate and petitioner received it timely. Therefore I must conclude that her appeal was untimely, and the agency may continue its action to recover the overpayment.

CONCLUSIONS OF LAW

Petitioner's appeal of an MA overpayment claim was filed 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 15th day of January, 2016

\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 January 15, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability