



FH  
[REDACTED]

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

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MAC/171252

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 4, 2016, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Rock County Department of Social Services [“County”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone from Madison, Wisconsin on May 10, 2016. At petitioner’s request Hearings scheduled for April 7, 2016, March 17, 2016, and February 11, 2016 were rescheduled.

The issue for determination is whether the Division of Hearings and Appeals [“DHA”] has jurisdiction in this matter.

There appeared at that time via telephone 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: [REDACTED] [REDACTED], ESS  
Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County, Wisconsin.
2. Petitioner received a written letter notice dated September 30, 2015 entitled *Notice to Compel Payment of Liability* stating: "You are hereby notified that the attached Order to Compel Payment is issued under s. 49.497(1m)(a), Wis. Stats., because you have failed to repay your Medical Assistance / BadgerCare / BadgerCare Plus overpayment." That September 30, 2015 letter notice also informed petitioner of his Hearing appeal rights, including the 30-day limit for requesting a Hearing appeal; enclosed with that September 30, 2015 letter notice was a second written letter notice also dated September 30, 2015 and entitled *Notice of Administrative Action* stating that petitioner "shall pay to the Department the amount of \$712.36 for the overpayment of Medical Assistance / BadgerCare / BadgerCare Plus benefits." That second September 30, 2015 letter notice also informed petitioner of his Hearing appeal rights, including the 30-day limit for requesting a Hearing appeal.<sup>1</sup>
3. Petitioner requested a Hearing by *Request For Fair Hearing* form dated January 4, 2016 received by DHA on January 6, 2016 via U.S. Mail postmarked January 4, 2016.

**DISCUSSION**

DHA can hear and decide an issue on the merits only if there is legal authority for it to do so. In legal language this is called *jurisdiction*. Wis. Admin. Code §§ HA 3.05(4)(a) (February 2013). There is no jurisdiction if a request for a Hearing is not filed timely. Wis. Admin. Code §§ HA 3.05(4)(e) (February 2013).

A request for a Hearing concerning an Order to compel payment of liability is untimely if it is not filed within 30 days from the date on the Order. Wis. Stat. § 49.497(1m)(a) (2013-14). A Hearing request is considered filed on the date of actual receipt by DHA, or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c) (February 2013). A Hearing request that is not filed within the 30-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the notice was dated September 30, 2015. Petitioner did not request a Hearing until January 2016. This is well outside of the allowed 30-day time period. Therefore, petitioner's Hearing request is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner testified that he did not ask for a Hearing sooner because his life was "rocky" and he was working 3<sup>rd</sup> shift. He testified that he was checking his mail and "saw stuff" but did not pay attention to it. This is unfortunate, but it does not create jurisdiction where none otherwise exists

Finally, it is noted that, even if petitioner's request for a Hearing had been filed in a timely manner, a Hearing concerning an Order to compel payment of liability is limited. "The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment." Wis. Stat. § 49.497(1m)(a) (2013-14). Petitioner does not dispute any of those types of determinations.

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<sup>1</sup> The September 30 2015 letter notices concerned the following delinquent MA debt: Claim Number: [REDACTED]; Overpayment period: May 1, 2014 to August 31, 2014; \$712.36.

**CONCLUSIONS OF LAW**

For the reasons discussed above, DHA does not have jurisdiction in this matter because petitioner's request for a Hearing was not filed in a timely manner.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same 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 11th day of May, 2016

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\sSean P. Maloney  
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 May 11, 2016.

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