



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MTI/172451

PRELIMINARY RECITALS

Pursuant to a petition filed March 1, 2016, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Jackson County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on March 24, 2016, at Black River Falls, Wisconsin. A hearing scheduled for March 24, 2016, was rescheduled at the petitioner's request.

The issue for determination is whether the department may intercept the petitioner's income tax refund to recover an overpayment of medical assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]

Jackson County Department of Human Services
420 Hwy 54 West
Po Box 457
Black River Falls, WI 54615

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Jackson County.

2. The county agency notified the petitioner on January 12, 2013, that it had determined that she was overpaid \$7,134.29 in medical assistance. It informed her that she had 45 days to appeal if she disagreed with this decision.
3. The department notified the petitioner on September 13, 2013, that it would intercept her state income tax refund to recover a \$7,134.29 overpayment of medical assistance she received September 1, 2011, through January 31, 2012. It informed her that she had 30 days to appeal if she disagreed with this decision. It also informed her that she did not have a right to raise issues she had a prior right to raise in earlier proceedings.
4. The petitioner filed her only appeal in this matter on March 1, 2016.

DISCUSSION

The Department may intercept a recipient's state income tax refund to recover an overpayment of medical assistance. *See* § 49.85. The Department of Health Services must certify any amount of benefits it is entitled to recover to the Department of Revenue at least once a year. Wis. Stat. § 49.85(2)(a). The Department seeks to intercept the petitioner's taxes to recover \$7,134.29 in medical assistance benefits her household received from she received September 1, 2011, through January 31, 2012.

The department notified her of this overpayment on January 12, 2013, and told her that she had 45 days to appeal as allowed by Wis. Admin. Code, § HA 3.05(3). She never appealed. The department then obtained a judgment for the overpayment pursuant to Wis. Stat. § 49.497(1m)(b). Finally, the department filed an action to intercept tax her taxes on September 13, 2013, and told her that she had 30 days to appeal as allowed by Wis. Stat. § 49.85(3)(a)2. The only appeal she ever filed on any of these matters was on March 1, 2016. That is too late to challenge the intercept notice sent to her on September 13, 2013. It does not matter that the department has had the opportunity to intercept more than one of her tax refunds because the "person may be precluded from challenging any subsequent setoff of the certified amount by the department of revenue, except on the grounds that the certified amount has been partially or fully paid or otherwise discharged, since the date of the notice." Wis. Stat. § 49.85(3)(a)4. And even if she could appeal the tax intercept she would lose because the "Division of Hearings and Appeals can limit the scope of the hearing to matters the petitioner has not had a previous chance to appeal." Wis. Stat. § 49.85(4)(a). As noted, the petitioner already had a chance to appeal the underlying overpayment but didn't do so.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals cannot consider the petitioner's appeal because it is untimely.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 Madison,
Wisconsin, this 13th day of May, 2016

\sMichael D. O'Brien
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 13, 2016.

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