



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MTI - 175985

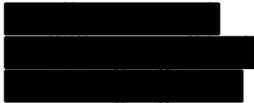
PRELIMINARY RECITALS

Pursuant to a petition filed August 3, 2016, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to issue a tax intercept to recover a Medical Assistance (MA) overpayment, a hearing was held on September 22, 2016, by telephone.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect an MA overpayment

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. Petitioner was eligible for MA with another individual, J.C., during the period December 1, 2013 through July 31, 2014. On October 1, 2014 the county notified petitioner and J.C. that they were overpaid \$6,978 in MA payments during that period. J.C. appealed the notice but later abandoned the appeal. Petitioner did not appeal.

3. The agency sent petitioner a repayment agreement and three dunning notices. Petitioner did not respond. On July 5, 2016, the Department was awarded a judgment against petitioner by the Dame County Circuit Court.
4. On July 15, 2016, the PACU sent petitioner a notice informing him that it intended to intercept his state tax refunds to recover the overpayment.
5. To date no payments have been made on the claim.

DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, FoodShare, and MA. The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit 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.

In addition, before the Department can use a tax intercept to recover an MA overpayment, it first must obtain a judgment against the individual. Wis. Stat., §49.85(2)(a)3.

At this point the Division of Hearings and Appeals must conclude that the Department can utilize the tax intercept to recover the overpayment. There is no question that petitioner owes the money; I cannot overturn the Dane County Circuit Court judgment. Since the debt is clear and the statute allows a tax intercept to be used, I have no authority to order the intercept to be withdrawn.

CONCLUSIONS OF LAW

Because a judgment against petitioner for the MA overpayment at issue in this case has been awarded, the agency may use all legal means, including a tax intercept, to recover it.

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, **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 26th day of September, 2016

\s _____
Brian 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 September 26, 2016.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability