



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MAC - 205887

PRELIMINARY RECITALS

Pursuant to a petition filed on August 2, 2022, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Public Assistance Collection Unit - 5173 regarding Medical Assistance (MA), a hearing was held on December 22, 2022, by telephone.

The issue for determination is whether petitioner's appeal was filed timely.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Megan Ryan
Public Assistance Collection Unit - 5173
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Crawford County who was a recipient of medical assistance.
2. On November 21, 2019, the agency issued to petitioner a Medical Assistance Overpayment Notices, informing her that she was not eligible for the Medical Assistance benefits she received from December 1, 2018 to September 30, 2019, in the amount of \$1,219.57 (claim [REDACTED]); ad from March 1, 2018 to November 30, 2018, in the amount of \$1,072.02(claim [REDACTED]). The notices informed her of her right to request a fair hearing withing 45 days, by January 6, 2020.
3. On January 30, 2020, February 4, 2020, March 30, 2020 the agency issued to petitioner dunning notices regarding the two claims.
4. On July 3, 2022, the agency issued to petitioner a Notice of Administrative Action of its Order to Compel Payment of Liability regarding the medical assistance debt. The Notice and Order were accompanied by an Affidavit of Collector asserting that that a delinquency occurred on July 1, 2020 and that petitioner owed \$2,291.59 and had failed to pay the debt or enter into a repayment agreement. The notice informed her of her right to appeal the Order to Compel Payment within 30 days of the date of the order.

DISCUSSION

An administrative law judge has the authority to review and rule on a matter only if there is jurisdiction to do so. There is no jurisdiction if an appeal is not timely filed. For MA/BC+ overpayments, an appeal must be filed within 90 days of the agency action. Wis. Stats. § 49.45. For orders to compel payment, an appeal must be filed within 30 days. Wis. Stats., § 49.497(1m)(a).

At the hearing, the agency produced evidence that it issued notices to the Petitioner at her last-reported address regarding overpayments of Medical Assistance benefits. The deadline to appeal the overpayments was January 6, 2020. Petitioner testified at hearing that she was not contesting the overpayment determinations. If she were, her appeal of those determinations would be untimely.

The agency subsequently issued dunning notices to the petitioner's last-reported address. After issuing the required dunning notices and receiving no payments, the agency took action to order payment and issued a notice of that action to petitioner at the same address.

Petitioner testified that she did make payments toward a public assistance overpayment debt and did not understand that her FoodShare (FS) debt and medical assistance debt were two separate obligations and that she was actually only making payments toward the FS debt. She testified that after recently seeking legal advice, she realized that she has not made payments toward the medical assistance debt and that she is required to do so. Petitioner may have misunderstood the requirements for repayment and/or believed she was making payments, but it is clear that she has made no payments related to the medical assistance debt that is at issue here. The agency may obtain an order to compel payments from those who have not taken steps to repay a medical assistance overpayment. The process for doing so is found in Wis. Stat. § 49.497(1m)(a):

If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability.

Having conceded the need to pay the debt, petitioner seeks to challenge the Order to Compel Payment of Liability. There is an appeal right regarding this action:

Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under Ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. 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)

The deadline to appeal that action was 30 days after the date of the order, which was July 3, 2022. The thirtieth day after the date of the order was Tuesday, August 2, 2022. Petitioner's appeal was received by the Division on August 5, 2022. The appeal was sent in a mailing envelope that bears a postage stamp, indicating it was sent by U.S. Mail, but it contains no postmark date. A hearing request that is submitted by mail is considered filed on the date of actual receipt by the Division or the date of the postmark, whichever is earlier. Wis. Admin. Code §HA 3.05(3)(c). The envelope contains no postmark. The record does not contain evidence of any date related to mailing, other than the date of receipt. I must find that the appeal was filed on the date it was received by the Division, August 5, 2022.

Based on the facts presented, I find that the appeal of the Order to Compel Payment of Liability was untimely filed. The Division does not have jurisdiction to address the merits of the appeal. I do not have the authority to extend the appeal deadline based on good cause. I am without authority to base any decision on grounds of equity. It is the longstanding policy of the Division that its administrative law judges do not possess equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp 540, 545 (E.D. Wis.1977). See also, *Village of Silver Lake, Wis. v. DOR*, 87 Wis. 2d 463 (Wis. App. 1978). The Division must limit its decisions to the law as set forth in state statutes and administrative code provisions.

CONCLUSIONS OF LAW

The appeal was not filed timely. The Division does not have jurisdiction over the dispute.

THEREFORE, it is

ORDERED

That the petition for review 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, 4822 Madison Yards Way, 5th Floor North, 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

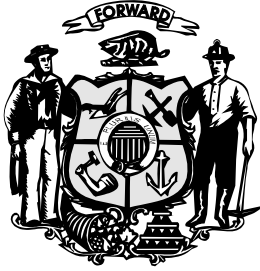
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 29th day of December, 2022

\s 

Beth Whitaker
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 December 29, 2022.

Public Assistance Collection Unit - 5173
Public Assistance Collection Unit
Division of Health Care Access and Accountability