



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MTI - 207782

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on February 15, 2023, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Eau Claire County Department of Human Services regarding Medical Assistance (MA), a hearing was held on April 11, 2023, by telephone.

The issue for determination is whether petitioner's appeal is 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: [REDACTED] and [REDACTED]  
Eau Claire County Department of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

**ADMINISTRATIVE LAW JUDGE:**

Jason M. Grace  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. In January, 2019, the agency sent the petitioner a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice, indicating that his household was overissued MA benefits in the amount of \$2,074.06 for the period of 4/1/2018 – 12/31/2018.
3. The agency sent petitioner a repayment agreement on February 4, 2019.
4. The agency sent the petitioner dunning notices (reminders about the debt) on March 4, 2019; April 2, 2019; and, May 2, 2019.
5. On October 6, 2022, the agency sent petitioner an Order to Compel Payment of Liability regarding the MA/BCP overpayment. It set forth a deadline to appeal of 30 days from the date of the notice.
6. On December 22, 2022, the agency obtained a judgement from the circuit court for the MA/BCP debt in Eau Claire County case [REDACTED].
7. On January 13, 2023, the agency sent the petitioner a notice of State tax intercept, advising him that, “Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt.” The debt was listed as totaling \$2,074.06. The notice further informed petitioner that he had 30 days from the date of the notice to appeal.
8. The petitioner filed a request for a fair hearing that was postmarked February 15, 2023.

### DISCUSSION

The Department may intercept a recipient’s state income tax refund to recover an overpayment of medical assistance. See Wis. Stat., §49.85. 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 overpayment of general relief benefits, overissuance of FoodShare, and MA payments made incorrectly. 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).

A party has 30 days from the date of the letter/notice of tax intercept to file an appeal, as the Department’s certification goes into effect 30 days from the date the recipient is notified, unless it is appealed. Wis. Stat. § 49.85(3). In this case, the date of the tax intercept notice was January 13, 2023. As such, petitioner needed to file his appeal by February 13, 2023. Petitioner did not file his appeal until February 15, 2022. The date of filing is the earlier of the date the appeal is received by DHA or the postmark date. See, Wis. Admin. Code § HA 3.05(3)(c).

Petitioner indicated that he gave the letter containing his appeal to the grocery store where he bought postage stamps. His letter was to be forwarded by the store to the post office with the store’s general mail. He gave the letter to the grocery store on February 9<sup>th</sup> or 10<sup>th</sup> but it appears it was not forwarded to the post office until February 15<sup>th</sup>.

It was ultimately the petitioner’s obligation to ensure the appeal was timely filed. As the appeal was not timely filed, I have no authority to consider it. Therefore, I must uphold the agency’s decision to intercept his income tax refund. I would note that it is the long-standing policy of the Division of Hearings & Appeals, Public Assistance & Social Services Unit, that the Department's assigned administrative law

judges do not possess equitable powers, and cannot base a ruling upon an idea of what is deemed fair. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, regulations, and administrative code provisions. Under law, petitioner has not timely appealed either the underlying overpayment or the tax intercept collection; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

Petitioner may wish to contact the Public Assistance Collection Unit at 1-800-943-9499 to see if he can make arrangements for any further collection of the remaining debt.

### CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no authority to consider the petitioner's appeal because it is untimely.

**THEREFORE, it is** **ORDERED**

That 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, 4822 Madison Yards Way, 5<sup>th</sup> 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**

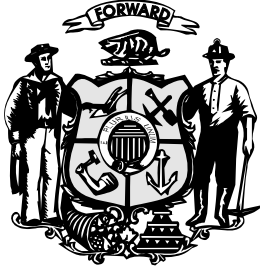
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 12th day of April, 2023



\s \_\_\_\_\_  
Jason M. Grace  
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 April 12, 2023.

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