



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MAC - 208599

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on May 9, 2023, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Dane Cty. Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on June 22, 2023, by telephone. The hearing record was held open through June 28, 2023 for additional evidence from both parties. The agency submitted Exhibits 1 through 8. Petitioner did not submit documentary evidence.

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: Monica Johnson  
Dane Cty. Dept. of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County who was enrolled in Medical Assistance.
2. On August 29, 2016, petitioner submitted shelter verification regarding the address [REDACTED], signed by petitioner's father [REDACTED].
3. On September 6, 2016, petitioner submitted vehicle registration to verify his address at [REDACTED].
4. On September 29, 2016, the agency issued to petitioner a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice, informing him that he was not eligible for the Medical Assistance he received from December 1, 2015 to July 31, 2016 in the amount of \$16,636 which occurred due to client error for failure to provide accurate information. The notice was mailed to petitioner at [REDACTED]. The notice informed him that the deadline to appeal the determination was November 14, 2016.
5. The overpayment included a March 2016 Medical Assistance payment in the amount of \$133.13 for billed services in the amount of \$456 on petitioner's behalf, in addition to the monthly capitation fee of \$233.45.
6. On October 4, 2016, the agency issued to petitioner a Medical Assistance Repayment agreement regarding the public assistance debt in the amount of \$1,636 and instructed petitioner to make full payment or enter into a repayment agreement by October 25, 2016.
7. On November 1, 2016, petitioner contacted the agency by telephone to discuss the overpayment and spoke about it with Monica Johnson on November 2, 2016. He expressed understanding and requested that a repayment agreement be re-sent to him.
8. The agency re-sent a repayment agreement which was not returned as undelivered.
9. On November 2, 2016, December 2, 2016, and January 3, 2017, the agency issued to petitioner dunning notices regarding the public assistance debt.
10. On July 17, 2018, petitioner contacted the agency by telephone to discuss the overpayment.
11. On April 6, 2023, the agency issued to petitioner a Notice of Administrative Action regarding its issuance of an Order to Compel Payment of Liability regarding the public assistance debt. The notice was accompanied by an Affidavit of Collector stating that the February 1, 2017 delinquent payment was still owed in full in the amount of \$1,636. The notice was mailed to petitioner at [REDACTED]. The notice informed petitioner that he had 30 days to appeal the action.
12. On May 9, 2023, the Division received petitioner's appeal by fax.

## DISCUSSION

Wis. Stat., §49.497(1m)(a) provides that if, after notice of incorrect payment is made, a recipient who is liable for an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the State of Wisconsin may bring an action to enforce the liability or may issue an order to compel payment of the liability.

Petitioner's appeal identified the issue as an overpayment. At hearing, he sought to address the merits of the underlying overpayment, arguing that his appeal of the overpayment should be considered timely because he was unaware of the overpayment notice and did not live at the address to which it was sent. He asserted that he was the victim of identity theft that occurred nine years ago. The agency's representative at hearing testified that she herself spoke to the petitioner by telephone in 2016 regarding the overpayment notice was issued, giving her first-hand knowledge that he was aware of it. Petitioner asserted that someone else may have spoken to her, falsely representing that they were the petitioner. First, it is unclear why anyone would have done that and no evidence that anyone did. Also, the agency presented evidence of address verification shortly before the notice was sent, in which petitioner's father

was identified by name and appears to have signed a statement stating that petitioner resided at the address to which the notice was sent. Petitioner could not explain this other than to raise the possibility that a sibling may have filled it out, falsely stating that petitioner lived there, an entirely implausible explanation. Petitioner resided at the address where the notice was sent and actually received the notice. Petitioner was given the opportunity to submit evidence after the hearing that his identity was stolen. He did not do so. Petitioner's claim that he did not receive the overpayment notice, repayment agreement and dunning notices was not credible. He received notice of the overpayment determination and was provided with all necessary information to appeal it.

The Division does not have jurisdiction to address the overpayment determination as the appeal of the overpayment was untimely. The deadline to appeal the overpayment was November 14, 2016. Petitioner's appeal was filed 2,367 days after that deadline. Moreover, according to the law, the only issues that can be addressed when appealing an order to compel payment of liability are whether petitioner paid off the overpayment or whether he has entered into a repayment agreement and complied with it.

Regarding the Order to Compel Payment of Liability, the notice was issued on April 6, 2023 and the deadline to appeal was 30 days later. The thirtieth day after April 6, 2023 was Saturday, May 6, 2023. When the act of filing with a state agency is done on a Saturday and the agency has no office hours on Saturday, the act may be done on the next succeeding day that is not a Sunday or a legal holiday. Wis. Stat. Secs. §990.001(4)(a) and (c). The Division had no office hours on Saturday, May 6, 2023. Monday, May 8, 2023 was not a legal holiday. Petitioner's appeal deadline was Monday, May 8, 2023. The appeal was filed with the Division on May 9, 2023. Petitioner incorrectly mailed the appeal, postmarked on May 3, 2023, to the county agency rather than to the Division, contrary to written instructions in the notice. It was forwarded to the Division by the agency as a courtesy. The agency had no obligation to file petitioner's appeal for him. Petitioner's act of mailing the appeal to an agency other than the Division of Hearings and Appeals does not constitute filing the appeal with the Division.

Petitioner's appeal of the agency's action to compel payment of liability was not filed timely. The Division has no jurisdiction to hear the case.

I note that if the appeal had been filed timely, it is undisputed based on this record that the public assistance debt in question was delinquent and remained outstanding and that petitioner did not make payments or enter into a repayment agreement. It is clear that that the agency took all actions necessary to compel payment of that debt. I would have found that the agency correctly issued the Order to Compel Payment of Liability.

### CONCLUSIONS OF LAW

The DHA does not have jurisdiction to address the merits of the underlying overpayment or the issuance of the Order to Compel Payment because petitioner's appeal was untimely filed regarding both issues.

**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, 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

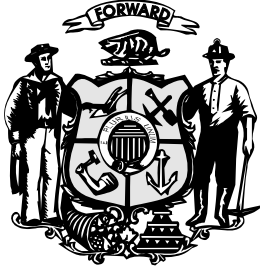
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 19th day of July, 2023



\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 July 19, 2023.

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