



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/173729

PRELIMINARY RECITALS

Pursuant to a petition filed April 13, 2016, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a telephonic hearing was held on June 14, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has established an MA overpayment against the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED] HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received MA from at least April 1, 2014-November 30, 2014 as a household of 1. See Exhibit 1.
3. On March 23, 2016 the agency issued a notice of MA overpayment to the petitioner stating that she had been overpaid MA in the amount of \$1893.69 (Claim # [REDACTED]) from April 1, 2014-November 30, 2014 due to failure to report accurate household members due to client error. See Exhibit 5.

DISCUSSION

The Department may recover any overpayment of MA that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

Wis. Stat. §49.497; see also *Medical Eligibility Handbook*, §22.2.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm> and *BadgerCare Plus Eligibility Handbook*, §28.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. The MA recovery statute clearly provides for recovery of MA when a recipient or representative fails to report income which would affect eligibility. The failure does not have to be intentional.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by the agency was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

In this case, the agency presented a well-documented case to establish that it was correctly pursuing an MA overpayment against the petitioner. The agency discovered that petitioner had failed to report accurate household composition and her husband's earned income. The agency investigated the matter further, and confirmed that petitioner failed to report her husband's earned income which resulted in the petitioner being over the income limit during the overpayment period. As a result, the agency correctly determined that the petitioner was overpaid \$1,893.69 for her failure to report correct household composition and income as required resulting in MA claim payments and net capitation fees during the overpayment period in question.

During the hearing, petitioner's testimony was that she and her husband were married in 2003 and had marital problems beginning in approximately 2008 and then off and on again. Petitioner's timeframes were somewhat inconsistent, but the gist of her testimony was that he would leave her off and on, but that he would come back to her every 2 weeks.

In the end, I conclude that the overpayment was determined correctly. I can believe that the couple had marital trouble and that there may have been times when petitioner's husband did not come home at night. However, if a person signs up for public assistance alleging that her husband does not live with her, then he actually better not live with her. All of the records provided by the agency show the husband to use the same address as petitioner, they were on leases together, they were evicted from the same residence together per CCAP, his employer used the same address as petitioner, Facebook posts about their 12 years of marriage together, and credit reports showing the same address. Further, it appears that only once the husband lost his source of income, that petitioner reported him in the home.

The law and policy are clear that this is recoverable. The documents provided by the agency for hearing support the amount of the overpayment for the time periods in question. Therefore, I must find that the agency correctly seeks to recover these benefits. Petitioner may wish to follow up with the Public Assistance Collection Unit to see if a reasonable repayment arrangement can be made so as to avoid any tax intercepts.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. 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, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency has established an MA overpayment against the petitioner in the amount of \$1893.69 (Claim # [REDACTED]).

THEREFORE, it is

ORDERED

The petition for review herein 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 Milwaukee,
Wisconsin, this 21st day of June, 2016

\sKelly Cochrane
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 June 21, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability