

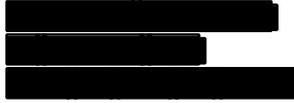


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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION
Case #: MOP - 175153

PRELIMINARY RECITALS

Pursuant to a petition filed on June 24, 2016, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services regarding Medical Assistance (MA), a hearing was held on July 19, 2016, by telephone. The record was held open 3 days post-hearing to allow the agency time to review its historical phone logs and search another telephone number provided by the petitioner at hearing. On July 20, 2016 the agency provided the record of telephone contact to this administrative law judge. The email showing that record indicated that a copy of the record would be mailed to the petitioner. It is also attached to this Decision for ease of reference.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:  ESS
Fond Du Lac County Department of Social Services
50 N Portland St
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. She received MA (BadgerCare) in Wisconsin from at least September 1, 2015-February 29, 2016.
3. The petitioner was employed with [REDACTED] from approximately October 1, 2015 –April 30, 2016. Exhibit 2.
4. On September 9, 2015 the agency issued a notice to petitioner showing that the agency was not budgeting any income for her, and what her reporting requirements were. Exhibit 1.
5. In February 2016 petitioner reported her income from [REDACTED] to the agency.
6. On June 13 and 20, 2016 the agency issued a notice of MA overpayment to the petitioner stating that it calculated an overpayment of MA against the petitioner for the period of December 1, 2015-February 29, 2016 in the amount of \$1479.72 (claim # [REDACTED]) due to failing to report income.

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 evidence to establish that it was correctly pursuing an MA overpayment against the petitioner. BadgerCare is available to adults like the petitioner with household income at or below 100 percent of the federal poverty limit (FPL). *BadgerCare Plus Eligibility Handbook*, §1.1.2. Income changes must be reported when the total monthly income of the assistance group exceeds 100% FPL, and the change must be reported by the 10th of the month following the month in which the total income exceeded its previous threshold. *BadgerCare Plus Eligibility Handbook*, §27.3. This reporting requirement was reiterated in the notice sent to petitioner on September 9, 2015. The agency discovered in February 2016 that petitioner had failed to report accurate household income. As a result, the agency

determined that the petitioner was overpaid MA because she failed to report correct household 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 believed she reported the income to the agency prior to February. There was no evidence of this report. However, the record was held open 3 days post-hearing to allow the agency time to review its historical phone logs and search another telephone number provided by the petitioner at hearing. On July 20, 2016 the agency provided the record of telephone contact to this administrative law judge. There is no record of petitioner's telephone number making a call into the agency after her employment and earnings began in October. Petitioner also testified that she was told by someone at the agency that she did not have to report the information until her six month review. This very unspecific allegation contradicts her testimony that she knew and did report earlier, and at best, would be an equitable argument over which I have no jurisdiction.

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 overpayment of MA against the petitioner in the amount of \$1479.72 (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, **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 9th day of August, 2016

\s _____
Kelly 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 August 9, 2016.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability