



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]

DECISION

MOP/142832

PRELIMINARY RECITALS

Pursuant to a petition filed August 2, 2012, under Wis. Stat. § 49.45(5) (2009-10), to review a decision by the Winnebago County Department of Human Services ["County"] in regard to overpayments of Medical Assistance ["MA"], a Hearing was held via telephone on August 28, 2012. At petitioner's request the record of the August 28th Hearing was held open until September 11, 2012. The Hearing in this matter was held at the same time as the Hearing for the following 2 closely related matters concerning the same petitioner: CCO-142830 & FOP-142831.

The issue for determination is whether the following 6 Claims may be established against petitioner for overpayments of MA in the total amount of \$7,276.82 covering the time period December 2009 to May 2012:

- (A) Claim # [REDACTED] in the amount of \$135.00;
- (B) Claim # [REDACTED] in the amount of \$1,894.82;
- (C) Claim # [REDACTED] in the amount of \$3,208.76;
- (D) Claim # [REDACTED] in the amount of \$1,512.24;
- (E) Claim # [REDACTED] in the amount of \$121.00; and,
- (F) Claim # [REDACTED] in the amount of \$405.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Wisconsin Department of Health Services
Room 650

1 West Wilson Street
P.O. Box 7850
Madison, Wisconsin 53707 -7850.
BY: Leslie Vosters, ESS
Winnebago County Department of Human Services
220 Washington Avenue
Oshkosh, Wisconsin 54903 -2187

OTHER PERSON PRESENT:

██████████, father of petitioner’s child
Jack Haldeman, Manager & Investigator, O’Brien & Associates

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a resident of Winnebago County, Wisconsin.
2. Petitioner has a minor child (male; age 3 years) in common with adult male GC.
3. The County established the following 6 Claims against petitioner for overpayments of MA in the total amount of \$7,276.82 covering the time period December 2009 to May 2012:
 - (A) Claim # ██████████ in the amount of \$135.00;
 - (B) Claim # ██████████ in the amount of \$1,894.82;
 - (C) Claim # ██████████ in the amount of \$3,208.76;
 - (D) Claim # ██████████ in the amount of \$1,512.24;
 - (E) Claim # ██████████ in the amount of \$121.00; and,
 - (F) Claim # ██████████ in the amount of \$405.00.
4. During the time period of the overpayments detailed in *Finding of Fact #3*, above, petitioner, GC, and their child all lived together.
5. Petitioner never reported to the County that GC was living with her during the time period of the overpayments detailed in *Finding of Fact #3*, above.
6. During the time period of the overpayments detailed in *Finding of Fact #3*, above, GC had income; GC’s income put petitioner over the MA income limit.

DISCUSSION

An overpayment of MA benefits may be recovered only in the following 3 circumstances:

- A. A misstatement or omission of fact by a person supplying information in an application for benefits;
- B. The failure of an MA or BadgerCare 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; or,
- C. The failure of an MA or BadgerCare 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(1)(a) (2009-10); Wis. Admin. Code § DHS 108.03(3)(b) (May 2010); See also, *Badger Care + Eligibility Handbook* ["BC+EH"] 28.1.; *Medicaid Eligibility Handbook* ["MEH"] 22.2.1; BEM/DWS Operations Memo, No: 05-39, Date: 09/29/2005; and, BEM/DWS Operations Memo, No: 06-10, Date: 02/09/2006.

Petitioner never reported to the County that GC was living with her during the time period of the overpayments detailed in *Finding of Fact* #3, above. Therefore, it was correct to establish against petitioner the 6 MA overpayment Claims noted above.

The County presented convincing evidence that GC was living in the same home with petitioner during the time period in question: GC owns the home; GC keeps several vehicles at the home and one of those vehicles is used routinely by petitioner; GC gets his mail at the home; GC mows the lawn at the home; GC takes care of maintenance at the home; GC keeps 3 of his dogs at the home; Wisconsin Court records have the home's address as GC's address; GC admits that he is at the home "sometimes 5 days a week" (but claims he does not sleep overnight there). Based on all of this evidence, much of which is derived from statements made by petitioner and GC, it must be concluded that during the time period of the overpayments petitioner, GC, and their child all lived together.

Petitioner and GC both testified that they did not live together during the time period in question except for perhaps the first few months (until February 2010). This is not credible. At petitioner's request the record of the August 28th Hearing was held open until September 11, 2012 to allow petitioner to submit additional evidence. In particular, petitioner stated that she paid rent to GC and that she would submit copies of checks to show this. Nothing was ever received from petitioner. Petitioner and GC testified that they did not live together because they had a fight. They stated that they would submit police reports concerning the fight. Nothing was ever received from petitioner or GC.

Finally, petitioner argues that the County "went by hearsay." This is not correct. Much of the County's evidence is statements made by petitioner or GC (or both) -- either at the Hearing or prior to the Hearing during the investigation. Such statements are not hearsay. See, Wis. Stat. § 908.01(4) (2009-10). Both petitioner and GC were present at the August 28th Hearing and testified.

CONCLUSIONS OF LAW

For the reasons discussed above, the following 6 Claims may be established against petitioner for overpayments of MA in the total amount of \$7,276.82 covering the time period December 2009 to May 2012:

- (A) Claim # [REDACTED] in the amount of \$135.00;
- (B) Claim # [REDACTED] in the amount of \$1,894.82;
- (C) Claim # [REDACTED] in the amount of \$3,208.76;
- (D) Claim # [REDACTED] in the amount of \$1,512.24;
- (E) Claim # [REDACTED] in the amount of \$121.00; and,
- (F) Claim # [REDACTED] in the amount of \$405.00.

NOW, THEREFORE, it is

ORDERED

that the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of September, 2012

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals

c: Winnebago County Department of Human Services - email
Department of Health Services - email



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 19, 2012.

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