



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MTI/143142

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2012, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a telephone hearing was held on September 17, 2012.

The issue for determination is whether petitioner is a liable party on a Medical Assistance (MA) overpayment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Deb Bowman

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935 -4595

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. Petitioner has not lived with her ex-husband since at least 1994, the year of their divorce.
3. In April of 2006, petitioner's ex-husband opened a Foodshare case and an MA case that included petitioner and their two children. The Foodshare case was appealed by petitioner, and resulted in

a decision finding that petitioner is not liable for the established Foodshare overpayment (see, DHA Decision in case no. FTI/14157, issued July 30, 2012).

4. Subsequently, in November of 2007, the county established an overpayment on the case because petitioner's ex-husband failed to report earned income. Two claims were established:
 - a. Claim No. [REDACTED] in the amount of \$1,914.47 for the period December 1, 2006 to February 28, 2007; and
 - b. Claim No. [REDACTED] in the amount of \$2,355.12 for the period June 1, 2006 to September 30, 2006.
5. The county sent petitioner a notice of the claim in November of 2007, but the notice was sent to an old address. The PACU sent petitioner a tax intercept notice on September 11, 2009, again to an address at which petitioner no longer lived.
6. In August of 2012, petitioner received a notice informing her that she was liable for the claims identified at paragraph 4, above, and she filed this appeal.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any 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.
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.

See also the department's BC+ Handbook, Appendix 28.2. Unlike FoodShare overpayments, MA overpayments must be caused by the client's error. Overpayments caused by agency error are not recoverable.

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 FS, and Medical Assistance 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).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

Typically an appeal like this one would be dismissed as being untimely since the original notice was sent in 2007 and the tax intercept notice was sent in 2009. However, petitioner testified that she has not lived with her ex-husband since 1994, and that she received no notices of the overpayment prior to 2012. It is evident that petitioner appealed immediately after she received the 2012 notice, and she testified that that notice was the first she received concerning the claim.

Based on the evidence before me, I find that petitioner was not a household member when her ex-husband applied for and received MA. Obviously, if he applied and did not report his income, it is equally possible that he reported incorrect household members to maximize his benefits. I note that respondent testified that petitioner never used the medical benefits to which she was ostensibly entitled. I also find that petitioner did not receive any of the prior notices, and thus her time limit for appealing could not be tolled. I will order the agency to remove petitioner as a liable individual.

CONCLUSIONS OF LAW

Petitioner was not a member of the household that was overpaid MA in 2006-2007, as identified by claim nos. [REDACTED] and [REDACTED]. Petitioner did not receive notices of said claims until 2012, and thus cannot be held liable for the claims.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to remove petitioner as a liable party on claim nos. [REDACTED] and [REDACTED] within 10 days of this decision.

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 served and 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, 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 14th day of November, 2012

Peter McCombs
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 November 14, 2012.

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