



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/143807

PRELIMINARY RECITALS

Pursuant to a petition filed September 12, 2012, under Wis. Stat. § 49.45(5) (2009-10), to review a decision by the Brown County Human Services Department ["County"] in regard to an overpayment of Medical Assistance ["MA"], a Hearing was held via telephone on October 24, 2012. The Hearing in this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: FOP-143806.

The issue for determination is whether it was correct to establish the following claim against petitioner for an overpayment of MA: Claim Number [REDACTED] for the time period December 1, 2011 to May 31, 2012 in the total amount of \$910.28.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Wisconsin Department of Health Services
Room 650
1 West Wilson Street
P.O. Box 7850
Madison, Wisconsin 53707-7850

Sarah Beylon, ESS II
Diane Van Asten, Fraud Investigator Aid
Brown County Human Services Department
111 North Jefferson Street
P.O. Box 22188
Green Bay, Wisconsin 54305-2188

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #: [REDACTED]) is a resident of Wisconsin.
2. The County established the following claim against petitioner for an overpayment of MA: Claim Number [REDACTED] for the time period December 1, 2011 to May 31, 2012 in the total amount of \$910.28.
3. During the time period of the FS overpayment listed in *Finding of Fact #2*, above, petitioner was incarcerated, first in the [REDACTED] and then, starting in December 2011, in the [REDACTED]; petitioner did not report her incarceration to the County.
4. Petitioner can send out letters from the [REDACTED]

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.

An individual who is incarcerated in a correctional institution is not eligible for MA. Wis. Admin. Code § DHS 103.03(6) (December 2008); MEH 6.9. During the time period of the MA overpayment listed in *Finding of Fact #2*, above, petitioner was incarcerated and did not report this to the County. Petitioner does not dispute this. Therefore, the overpayment must be affirmed.

Petitioner testified that when she was incarcerated she could not report that she was incarcerated because she had no way to contact anyone. However, petitioner acknowledges that she can send out letters from the [REDACTED]. In fact, her request for a Hearing was sent from the [REDACTED].

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to establish the following claim against petitioner for an overpayment of MA: Claim Number [REDACTED] for the time period December 1, 2011 to May 31, 2012 in the total amount of \$910.28.

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, 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 25th day of
October, 2012

Sean P. Maloney
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 October 25, 2012.

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