



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MAC/143818

PRELIMINARY RECITALS

Pursuant to a petition filed September 12, 2012, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on November 7, 2012, at Appleton, Wisconsin.

The issue for determination is whether the Department has incorrectly determined that the petitioner is not paying on an overpayment liability.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Debbie DeBruin, fraud investigator
Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. The petitioner received BCP benefits from at least April 2011, through August 2011. Her husband's Unemployment Compensation (UC) income was not budgeted by the agency during this period, and an \$862 overpayment for the period resulted. The agency asserted that the

budgeting error was caused by the petitioner's failure to report that UC income. A MA/BCP overpayment notice was issued to the petitioner on November 9, 2011, and was followed by a repayment agreement (December 2, 2011) and dunning letters (January 3, 2012, February 2, 2012, May 2, 2012). The petitioner did not respond to the Repayment Agreement or dunning letters.

3. The petitioner contested the overpayment determination via fair hearing request in DHA case no. MOP/138188. That appeal was dismissed on April 30, 2012, due to untimely filing.
4. The Department issued an Order to Compel Payment of Liability to the petitioner on August 17, 2012. Exhibit 3.
5. The petitioner has made no payments towards the \$862 overpayment.

DISCUSSION

Following issuance of an MA/BCP overpayment notice, a person who then fails to enter into or adhere to a repayment agreement may be subject to an order to compel payment of that liability:

49.497(1m)(a) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under [ch. 227](#) by filing with the department a request for a hearing within 30 days after the date of the order. *The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.*

(*emphasis added*)

Wis. Stat. §49.497(1m)(a).

The petitioner does not contest the amount of the initial or current overpayment liability, or that she has not entered into a repayment agreement. The petitioner does assert that the overpayment was not her fault, and that she should therefore not be responsible for any repayment. However, the petitioner's chance to raise that issue was through a *timely* appeal of his overpayment notice; her husband filed an appeal, but it was not timely, so the issue cannot be re-visited here. Because there is no factual dispute that the petitioner has not repaid the overpayment, and has not entered into a repayment agreement by the time of hearing, there is no issue for this administrative law judge to decide herein.

CONCLUSIONS OF LAW

Because there is no factual dispute that the petitioner has not repaid the overpayment, and has not entered into a repayment agreement by the time of hearing, there is no issue for this administrative law judge to decide herein.

THEREFORE, it is

ORDERED

That the petition is 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 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 29th day of November, 2012

\sNancy J. Gagnon
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 29, 2012.

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