



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MOP/143663

PRELIMINARY RECITALS

Pursuant to a petition filed September 05, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on November 21, 2012. At petitioner's request Hearings scheduled for October 25, 2012 and September 25, 2012 were rescheduled. As agreed by both parties the record of the November 21, 2012 Hearing was held open until January 2, 2013 for the submission of post-Hearing briefs. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: FOP-143662.

The issue for determination is whether the following 2 Claims may be established against petitioner for alleged overpayments of MA in the total amount of \$2,610.00 covering the time period September 1, 2011 to June 30, 2012:

- (A) Claim # [REDACTED] September 1, 2011 to June 30, 2012; \$636.00; and,
- (B) Claim # [REDACTED] December 1, 2011 to June 30, 2012; \$1,974.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Zach Glascock
Cveykus Law Office
625 Washington Street
Wausau, WI 54403

Respondent:

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

By: Scott M. Corbett, Corporation Counsel
Marathon County

Office of Corporation Counsel
500 Forest Street
Wausau, WI 54403-5568

OTHER PERSONS PRESENT:

Sue Beilke, ESS
Jack Haldeman, Investigator, O’ Brien & Associates
Bobby Jo Hoffenbecker, Investigator, O’Brien & Associates

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. The County established the following 2 Claims against petitioner for alleged overpayments of MA in the total amount of \$2,610.00 covering the time period September 1, 2011 to June 30, 2012:
 - (A) Claim # [REDACTED] September 1, 2011 to June 30, 2012; \$636.00; and,
 - (B) Claim # [REDACTED] December 1, 2011 to June 30, 2012; \$1,974.00.
3. The County claims the alleged overpayments were caused because petitioner lived with the father of her children during the time period of the overpayments, petitioner failed to report this, and the father had income which 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.

The burden is on the state, in this case represented by the County, to show by a preponderance of the credible evidence that the overpayment occurred as alleged. Wis. Admin. Code § HA 3.09(4) (September 2001). The County has failed to do this.

The only substantial evidence the County offered to support its claim that petitioner lived with the father of her children during the time period of the overpayment is a written report from *O'Brien & Associates* dated June 14, 2012. However, that report concludes that during the time period of the alleged overpayment petitioner lived at 2 different locations -- part of the time with at the father's house and part of the time at the house of the father's father (the grandfather of petitioner's children): "bouncing from one residence to another approximately four times a year for a couple of months each." This conclusion was confirmed by the testimony of the investigator who wrote the report. It is also confirmed by the grandfather's statements that are contained in the June 14, 2012 *O'Brien & Associates* report. Petitioner herself testified that during the time period of the alleged overpayment she lived mostly at the grandfather's house (although she testified that she moved back to the father's house in May 2012).

The County points out that petitioner's oldest child attended school where the father lived, not where the grandfather lived. However, the evidence in the record of this matter is that the father and grandfather lived only about 15 minutes apart. Further, petitioner testified that she left her child in the school near the father because she did not want to disrupt her schooling.

The County also points to statements of 2 the grandfather's neighbors that are contained in the June 14, 2012 *O'Brien & Associates* report. One of those neighbors is not identified and stated only that "she did see anyone at the residence who had small children . . ." The other neighbor stated that petitioner lived with the father of her children and that she had not seen petitioner at the grandfather's house "in about 2 years." This neighbor's statement is not consistent with the conclusion reached by the *O'Brien & Associates* report, with the testimony of the *O'Brien & Associates* investigator, with the grandfather's statements, or with the testimony of petitioner.

Finally, the County points out that petitioner voluntarily refused child support from the father. This, however, is not indicative of where petitioner lived during the time period in question (especially given petitioner's testimony that she and the father were trying to reconcile their differences; petitioner testified that they married each other on July 13, 2012).

Given the above it cannot be concluded by a preponderance of the credible evidence that petitioner lived with the father of her children during the entire time period of the overpayments. Accordingly, the alleged overpayments cannot be sustained.

The County may establish an overpayment claim against petitioner for the time periods that petitioner did live with the father of her children if it can determine those time periods. The *O'Brien & Associates* investigator testified that he could not determine those time periods.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to establish the 2 Claims listed in Finding of Fact #2, above, against petitioner for the following alleged overpayments of MA in the total amount of \$2,610.00 covering the time period September 1, 2011 to June 30, 2012:

- (A) Claim # [REDACTED] September 1, 2011 to June 30, 2012; \$636.00; and,
- (B) Claim # [REDACTED] December 1, 2011 to June 30, 2012; \$1,974.00.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, and that the County NOT establish the following 2 Claims against petitioner for alleged overpayments of MA in the total amount of \$2,610.00 covering the time period September 1, 2011 to June 30, 2012:

- (A) Claim # [REDACTED] September 1, 2011 to June 30, 2012; \$636.00; and,
- (B) Claim # [REDACTED] December 1, 2011 to June 30, 2012; \$1,974.00.

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 7th day of February, 2013

\sSean 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 February 7, 2013.

Marathon County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Zach@cveykuslaw.com