



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MOP/144846

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Vernon County Human Services in regard to Medical Assistance, a hearing was held on December 28, 2012, at Viroqua, Wisconsin.

The issue for determination is whether the Department erred in its determination of a medical assistance overpayment in the amount of 51,680.84 for the period from 1/1/06 to 3/31/12.

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: Sarah Larson

Vernon County Human Services
318 Fairlane Drive, Suite 100
Viroqua, WI 54665-6131

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Vernon County.
2. The Department seeks repayment of overpaid medical assistance benefits as follows:
 - a. Claim [REDACTED] \$5,134.29

- | | | | |
|----|-------|------------|-------------|
| b. | Claim | ██████████ | \$444.87 |
| c. | Claim | ██████████ | \$9,799.73 |
| d. | Claim | ██████████ | \$775.68 |
| e. | Claim | ██████████ | \$29,183.31 |
| f. | Claim | ██████████ | \$877.77 |
| g. | Claim | ██████████ | \$382.95 |
| h. | Claim | ██████████ | \$2,730.84 |
| i. | Claim | ██████████ | \$292.68 |
| j. | Claim | ██████████ | \$816.00 |
| k. | Claim | ██████████ | \$518.36 |
| l. | Claim | ██████████ | \$724.36 |
3. During the period from 1/1/06 to 3/31/12, petitioner received medical assistance benefits. During this time she had some very significant medical issues including heart transplant.
 4. During this period, petitioner's residence was on ██████████ Wisconsin. During that period petitioner was married to ██████████. The medical assistance budget did not reflect that ██████████ lived in the home as petitioner reported that he lived outside of the home.
 5. In 2006 the household included petitioner and two minor children TK and MK. In June 2006 HA, a child was born. HA's father is ██████████.
 6. During the time period pertinent to this appeal, ██████████ left during the week to go to work. Most or all of this time the work was in Illinois. He would always return to the family home on weekends. When he was away during the week, he would stay in hotels near his work, or with relatives.
 7. ██████████ listed the ██████████ address as his residence address on tax returns and other official forms during this time period.
 8. During the period pertinent to this appeal, ██████████ paid all household-related expenses including housing costs, food, utilities, and family expenses.
 9. During the period, ██████████ income exceeded MA limits and would have made the household ineligible for MA.
 10. On May 21, 2012, the circuit court in Vernon County issued an order finalizing a divorce of petitioner and ██████████. The marital settlement agreement specifically states that ██████████ will continue living in the home with petitioner and their child in common.

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 *BadgerCare Plus Eligibility Handbook*. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Petitioner's primary argument is that the income for [REDACTED] should not be counted toward the household because he did not live in the household. Petitioner maintains that [REDACTED] lived outside the home.

According to the *BadgerCare Plus Eligibility Handbook* at § 2.2 "The BC+ Test Group includes the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. Inclusion in the Test Group is determined by qualifying relationships and legal responsibility." The qualifying relationships are further defined in § 2.2.1:

The BC+ Test Group for a primary person who is residing with his or her own child or with a spouse and the spouse's child will include the following individuals:

1. The primary person *and the primary person's spouse*.
2. A child under age 19 of the primary person or the primary person's spouse.
3. A co-parent of a primary person's child or the co-parent of the spouse's child.
4. *Any spouse of a co-parent*.

BadgerCare Plus Eligibility Handbook at § 2.2.1 (emphasis added). Additionally:

2.6 BC+ Test Group Financial Rules

The income and/or needs of all BC+ Test Group members will be used to determine financial eligibility for all members of the BC+ Test Group.

* * *

All members in the BC+ Test Group will be counted when determining the BC+ Test Group size even when there is no health care request for a member.

The income of all counted adults and children in the BC+ Test Group is used when determining the financial eligibility for all Test Group members, except the income of SSI recipients or other Test Adults or Test Children.

BadgerCare Plus Eligibility Handbook at § 2.6 (emphasis added).

██████ lived in the household even when he left to work out of town. He always intended to, and did, return to the home. He was financially responsible for the entire family. He never established any other residence. He listed the residence as his home on all forms. Furthermore, even now after the divorce, the marital settlement agreement indicates that he will continue to live in the home with petitioner and their child in common. There is no evidence in the record indicating that ██████ ever resided outside of the home. Under the rules of the program, ██████ status as spouse requires that he be part of the test group and that his income be included in eligibility determinations.

I understand the argument of the petitioner, that she felt that the marriage was challenging and that the two were not operating as an integrated family. It does not matter though because even petitioner concedes to the facts set forth in the findings of fact. Even under the facts as petitioner concedes, ██████ must be counted as part of the household.

The petitioner expressed some concerns about the agency's calculations as related to counting depreciation. For MA purposes, in determining monthly income of a self-employed the agency uses net income and adds back in depreciation. Wis. Adm. Code, §DHS 103.07(2)(a); BC+ Handbook, Appendix 16.4.3.2. Depreciation is considered part of income. Petitioner otherwise offered no rebuttal of the Department's calculation of the overpayments. The record adequately supports the claims.

CONCLUSIONS OF LAW

Petitioner was overissued MA in the amount of \$51,680.84 for the period from 1/1/06 to 3/31/12.

THEREFORE, it is

ORDERED

That this appeal 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 17th day of January, 2013

\sJohn P. Tedesco
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 January 17, 2013.

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