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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MGE/145013

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 03, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on December 18, 2012, at West Bend, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] (did not appear)  
[REDACTED]  
[REDACTED]

Appearing for petitioner:

[REDACTED]  
[REDACTED]

Respondent:

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

By: Linda Hunt, ESS

Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Michael A. Greene  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. Petitioner is resident in a nursing home. She has monthly income of \$833 subject to a tax intercept of \$83 per month for repayment of a FoodShare overpayment.<sup>1</sup>
3. On December 3, 2012, the agency sent petitioner a notice of decision advising her that her monthly patient liability would be \$802 effective January 1, 2013. The agency did not disregard the repayment amount of \$83 per month from her monthly income in determining the repayment amount (Exhibit 2).

### DISCUSSION

Petitioner argues that the repayment amount should be deducted from her income when determining her patient liability for long term care. She is correct under *Medicaid Eligibility Handbook* Ch. 15, ¶15.3.21 which states

A repayment is money the member has received from an income maintenance program and must give back because of a program error or violation. Since s/he is not entitled to the money, s/he must repay it. Therefore it should not be counted as income to the member.

While the examples in the manual suggest that only repayments made to the program by withholding amounts from the same program are subject to disregard, the rationale is the same even though this is a FoodShare payment being withheld as a result of a tax intercept.

Petitioner asked that the disregard be backdated to June 12, 2012. Petitioner's hearing request was filed on November 3, 2012 and my jurisdiction only goes back 45 days, *see* Wis. Admin. Code §HA 3.05(3). Based on petitioner's statement, she was only notified of the increase in patient liability on September 11, 2012, which brings the month of September into play. This is sufficient to order the agency to apply the disregard back through June 2012 since the first time she had notice of the increased patient liability was in September.

### CONCLUSIONS OF LAW

Repayments for benefit overissuances are not to be treated as income for purposes of determining patient liability under Medicaid long term care.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to recalculate petitioner's patient liability from June 2012 to the present disregarding the amount of the FoodShare tax intercept of \$83 per month from income. Any money owing shall be credited to petitioner's account either by way of alleviating a back balance or as a credit against future payments. These actions shall be taken within ten (10) days of the date 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

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<sup>1</sup> As of January 2013, petitioner's Social Security increased to \$847 per month, still subject to the \$83 reduction.

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 Milwaukee,  
Wisconsin, this 1st day of February, 2013

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\sMichael A. Greene  
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 1, 2013.

Washington County Department of Social Services  
Division of Health Care Access and Accountability