



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MOP/145296

PRELIMINARY RECITALS

Pursuant to a petition filed November 16, 2012, under Wis. Stat., §49.45(5), to review a decision by Columbia County Health & Human Services to recover Medical Assistance (MA), a hearing was held on December 19, 2012, at Portage, Wisconsin.

The issue for determination is whether the agency correctly determined an MA overpayment. It is noted that individuals' initials are utilized throughout the decision for confidentiality reasons.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Atty. Hal Menendez
Legal Action of Wisconsin, Inc.
31 South Mills Street
Madison, WI 53715

Respondent:

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

By: Jeanette Gessner
Columbia County Health & Human Services
P.O. Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County.
2. Since 2008 petitioner has lived with her now 15-year-old son in a home owned by E.T. E.T. is not the older son's father. On February 25, 2012, petitioner gave birth to N.T. Although she reported the birth of the child she did not clearly report that his father was in the home.

3. In August, 2012, petitioner did a review. In the review she noted that E.T. was N.T.'s father and was in the home. If E.T. had been included in the household, all members except the baby would have been ineligible for BC+ due to his income.
4. By a notice dated October 17, 2012, the agency informed petitioner that she was overpaid \$1,431.19 in BC+ benefits during the period April 1, 2012 through August 31, 2012, claim nos. [REDACTED] and 099366521.

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 BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

To be eligible for BadgerCare, a person must be under age 19, a custodial parent living with a child, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. Parents and their children who live together must be included in the household's fiscal test group. Admin. Code, §DHS 101.03(65).

Because both petitioner and E.T. lived with their child in common as of the child's birth, they had to be included together in the BC+ fiscal test group household. Because E.T. was not added to the case timely, petitioner was overpaid FS beginning April 1, 2012. The reason that the overpayment began April 1 was because, with 10 days to report the child's birth, E.T. should have been added in the next benefit month after the end of the 10 days. The problem after the child's birth was not that E.T.'s presence in the home was undisclosed, but that petitioner did not make clear that he was the father.

I conclude that petitioner was overpaid BC+ from April 1 through August 31, 2012, and petitioner acknowledges the overpayment for that period to be correct. Since the claim went only through August 31, it will be upheld in its entirety.

CONCLUSIONS OF LAW

Petitioner was overpaid BC+ from April 1 through August 31, 2012 because she failed to report that the father of her newborn child was the man who lived in her residence.

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 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 January, 2013

\sBrian C. Schneider
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 7, 2013.

Columbia County Health & Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
ham@legalaction.org