



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]

DECISION

MOP/146005

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 17, 2012, under Wis. Stat., §49.45(5), to review a decision by the Milwaukee Enrollment Services to recover Medical Assistance (MA), a hearing was held on January 16, 2013, by telephone.

The issue for determination is whether petitioner's husband lived with her since 2008. Note that individuals' initials are used for confidentiality purposes.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Katherine May  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has received BadgerCare Plus (BC+) MA since at least 2008. Her household included two daughters whose father is petitioner's husband C.J. C.J. was listed as an absent parent.
3. In early 2012 the agency was notified that C.J. might be living in petitioner's home, in particular because he reported her address to the child support agency. The agency began an investigation.

4. Since 2008 C.J. has used petitioner's address for some transactions. In May, 2012, petitioner told an investigator that she formerly lived at an address on [REDACTED] and that C.J. lived there at present, but she claimed that he did not live there when she lived there.
5. The agency concluded that C.J. lived with petitioner during the period August, 2008 until February 29, 2012. By notices dated December 4, 2012, the agency informed petitioner that she was overpaid a total of \$5,883.19 in BC+ during that period, claim nos. [REDACTED], [REDACTED], [REDACTED], and [REDACTED], [REDACTED], and [REDACTED].

### 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.

The issue in this case is whether the agency has proven by a preponderance of the evidence that C.J. lived with petitioner from 2008 through 2012. It is undisputed that when the agency investigated the matter in April, 2012, C.J. and petitioner were not living together. The issue is what evidence is available to show that they lived together.

The O'Brien and Associates investigation does not substantiate C.J.'s presence. A couple neighbors told the investigation that a person named "June" lived with petitioner, although one of them also called the person by C.J.'s name. Those statements are hearsay and do not substantiate a time period. Other documents are not helpful. Two court records name C.J. One from 2011 has him listed at petitioner's former address, but it is a domestic abuse restraining order filed by an unnamed person. The other is a small claims action filed against both petitioner and C.J. in June, 2011, but lists different addresses for them. There is a Dept. of Transportation query for C.J. that shows no address. There is a voter access record from February, 2012 showing both individuals at the address, but it is acknowledged that C.J. lived there then and that petitioner had recently moved out.

The only other pieces of evidence tying C.J. to petitioner's address is a credit report showing that address and the KIDS child support record. Credit reports are not particularly reliable because addresses are not necessarily reported by the individual, and while the KIDS report is worthwhile, it shows addresses reported by C.J. Petitioner testified that she never spoke to the child support agency during this time period, and nothing in the KIDS report confirms that she did.

I agree that the circumstances are suspicious, but there is little non-hearsay evidence tying C.J. to petitioner's address during the period in question.

### **CONCLUSIONS OF LAW**

The agency has not proven that petitioner's husband lived with her from 2008 into 2012, and thus petitioner cannot be found to be overpaid BC+ during that period for failing to report his presence.

**THEREFORE, it is ORDERED**

That the matter be remanded to the agency with instructions to rescind claim nos. [REDACTED], [REDACTED], [REDACTED], and [REDACTED], [REDACTED], and [REDACTED] 9 against petitioner and to cease recovery efforts. The agency shall do so within 10 days 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 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 24th day of January, 2013

---

\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 24, 2013.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability