FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/146127

PRELIMINARY RECITALS

Pursuant to a petition filed December 21, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on March 04, 2013, at Neenah, Wisconsin.

The issue for determination is whether this administrative law judge is precluded from reviewing petitioner's appeal because she has had a prior hearing on the merits of the same claim.

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: Leslie Vosters
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Winnebago County.
2. On September 25, 2012, a telephone hearing was conducted pursuant to a fair hearing request filed by the petitioner. The petitioner was contesting the respondent's findings of BadegerCare

Plus (BC+) overpayments during the period of September, 2011, through May, 2012, identified as:

> Claim No. 0900359170, in the amount of $6,618.24; and
>
> Claim No. 1900359171, in the amount of $1,654.78.

3. On October 2, 2012, a decision was issued by Administrative Law Judge Brian Schneider. He concluded that:

> The agency correctly determined a BC+ overpayment based upon petitioner's children not living with her as reported, with the exception of the two older children for the months of September through November, 2011.

His order provided:

> That the matter be remanded to the county with instructions to re-determine the overpayment in this case by adding the petitioner's two older children back into the BC+ household for the months of September, October, and November, 2011, and to inform petitioner of the amended claim amount. The county shall do so within 10 days of this decision. In all other respects the petition for review is dismissed.

Exhibit 2.

4. Recalculating the overpayment in response to the remand, the respondent reduced BC+ overpayment claim no. 1900359171 and sent notice to petitioner of the new claim balance.

5. Petitioner requested a rehearing regarding the October 2, 2012 decision, and that request was denied on October 29, 2012. Petitioner did not appeal the October 2, 2012, decision or the October 29, 2012 rehearing denial.

DISCUSSION

At hearing, petitioner did not raise objections to the re-calculation of the overpayment figure. Instead, she sought to present apparently new evidence concerning the issues addressed during the prior September 25, 2012, hearing, i.e., the physical placement of her children. The respondent replied that the presentation of such information was untimely.

The previous fair hearing decision specifically addressed the physical placement issue, and it provided petitioner with time frames to appeal that decision and/or request a rehearing. That did not occur; the petitioner does not get a "do over" here. The doctrine of preclusion applies in such circumstances. Claim preclusion requires a final judgment on the merits in a prior proceeding. Issue preclusion requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Id.*, p. 550.

Based upon the foregoing, I must conclude that I am precluded from reviewing petitioner's appeal based upon her presentation of further evidence of the placement of her children because she has had a prior hearing on the merits of the same claim.

CONCLUSIONS OF LAW

This administrative law judge is precluded from reviewing petitioner's appeal because she has had a prior hearing on the merits of the same claim.

NOW, THEREFORE, it is **ORDERED**

That the matter 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 22nd day of March, 2013

_____

\sPeter McCombs
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 March 22, 2013.

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