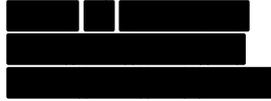




**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of



DECISION

MOP/146507

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 08, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance, a hearing was held on March 18, 2013, at [REDACTED] [REDACTED], Wisconsin.

The issue for determination is whether petitioner is liable for a \$5,518.53 medical assistance overpayment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Becky Hetfield

Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
[REDACTED] [REDACTED], WI 54301

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. She was receiving BadgerCare for herself and her child MM from 10/1/06 to 6/30/12. During the times pertinent to this appeal, the child, MM, was living with [REDACTED] [REDACTED] – the child’s father.

3. On November 30, 2012, the Department issued MA Overpayment Notice for that above period totaling \$5,518.53
4. Petitioner filed a timely appeal.

### DISCUSSION

The issue in the case is whether petitioner received MA for her daughter and herself at times when her daughter did not actually live in her household. The Department alleges that the daughter, during the periods of the overpayment, was living with her father and not with petitioner.

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. Adm. Code, §DHS 103.03(1)(f)1. The BC Plus Handbook, Appendix 2.2.1.2, provides as follows:

When the natural or adoptive parents of a child do not live together, and have joint placement arrangements for the child (through a mutually agreed upon arrangement or court order), only one parent can be determined eligible at a time unless there is reasonably equivalent placement. Reasonably equivalent placement means that the child is residing with each parent at least 40% of the time during a month.

If the child is not residing with both parents at least 40% of the time, only the parent with the greater percentage of the placement time may apply on behalf of the child and/or for him or herself as the caretaker relative of that child.

The county determined that as of late March, 2006, MM no longer was with petitioner 40% of the time, and because petitioner failed to report the change, she was overpaid BC+ because there was no eligibility.

In this case, the agency's case was persuasive enough to meet its burden. The Department offered evidence indicating that the daughter reported being homeless since August 2011. The child also claimed to the school that she was living with her father during the previous school year. Sgt. [REDACTED] of the

Brown Co. Sheriff's Dept. testified that [REDACTED] [REDACTED] is the mother of the daughter's friend and that [REDACTED] reported that the daughter had lived with them for several months and otherwise was living with the father. Sgt. [REDACTED] also spoke with the child's father who reported that the child had been living with him for about 8 years. The child attended school in the [REDACTED] school district during this period. During this period the father lived in [REDACTED] and [REDACTED] while petitioner lived in [REDACTED] [REDACTED]. I find it difficult to believe that the child would have attended schools in the father's district, approximately 20 miles from her mother's home, if living with the petitioner. The Department submitted documents which tend to corroborate the argument that petitioner's child lived with the father including the child's bank statement, school records, and pay stubs all showing the child's address as the father's [REDACTED] address.

The petitioner offered nothing of any weight to rebut the Department's position. Petitioner had no specific facts or recollections. She referred to poor memory and medical conditions. She also admitted that the child did not live with her for some of the time. This was an admission that she had not reported a change that was required to be reported. But, petitioner could not explain when any of the times were that the child did or did not live with her. This testimony was not helpful and was insufficient to rebut the Department's case.

### **CONCLUSIONS OF LAW**

The Department did not err in determining the MA overpayment.

**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 10th day of May, 2013

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\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 May 10, 2013.

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