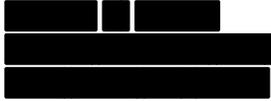




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/146536

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waushara County Human Services in regard to Medical Assistance, a hearing was held on May 23, 2013, at Wautoma, Wisconsin. Following the hearing, and at the petitioner's request, the parties were granted additional time to submit written arguments

The issue for determination is whether the Department erred in determining a \$1,977.71 medical assistance overpayment liability against petitioner for the period from February 1, 2011 to July 31, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Eva Shiffrin
131 West Wilson Street Suite 700
Madison, WI 53203

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Roxann Binkowski
Waushara County Human Services
213 W. Park Street
PO Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waushara County.
2. MA was opened and budgeted without household income of [redacted] (husband).

3. Petitioner and [REDACTED] have children and grandchildren in common.
4. During the period pertinent to this appeal, petitioner lived at the home on [REDACTED] [REDACTED] in [REDACTED] [REDACTED], [REDACTED] and received medical assistance benefits. The home is owned by [REDACTED]. [REDACTED] paid the mortgage and other bills. The couple shared a joint bank account. Petitioner's income was deposited into the joint account. Petitioner's husband spent several nights per week at the [REDACTED] [REDACTED] house and several nights per week at a room he rented at a mobile home in Appleton. Petitioner worked in Appleton where he earned between \$1,770 and \$1,810 in wages biweekly. His employer, OCB Restaurant Company listed the [REDACTED] [REDACTED] address as petitioner's home address.
5. In July 2012 petitioner applied for the QMB medical assistance program. On that application, petitioner reported that she had a joint checking account with [REDACTED]. The agency investigated and determined that [REDACTED] had income and was reporting the [REDACTED] [REDACTED] address as his home address for unemployment benefit purposes.
6. From approximately July 6, 2012 until approximately July 12, 2012, private investigator [REDACTED] [REDACTED] conducted an investigation under contract with the county agency.
7. Petitioner lost his job in Appleton in June 2012. From that time he began spending more time at the home on [REDACTED]. He presently resides full-time on [REDACTED] [REDACTED].
8. The Department issued a Medicaid/BadgerCare Overpayment Notice on December 3, 2012 indicating an overpayment of \$1,977.71 for the period from February 2011 to July 2012.
9. Petitioner filed a timely request for hearing.

DISCUSSION

In this case, the parties continued to discuss the merits of the overpayment claims following the hearing. One issue in dispute was whether the fact of SSI related medical assistance as of July 2012, and the retroactive application of those benefits to April 1, 2012 would properly negate some of the overpayment claim. In an e-mail to this ALJ on August 15, 2013, the Department representative conceded that the Department would recalculate the overpayment without the period from April 2012 onward.

BadgerCare Plus expands medical assistance coverage to previously ineligible persons and their parents or other qualified relatives. It is available to children under 19 and their parents or caretakers. *BadgerCare Plus Eligibility Handbook*, § 2.1. A parent must reside with a child under 19 to be eligible. *Id.*, § 2.2. The parent can remain eligible if a child is temporarily absent from the household. *Id.*, § 2.3.2. The absence cannot last more than six months. *Id.* In addition, a "caretaker" must continue "to exercise responsibility for the care and control of the child." *Id.*

As for the period from February 2011 to March 2012, I do find that there is an overpayment. Based on the entirety of the record in this matter, it seems to me that [REDACTED] was living away from the family because that is where his work was. I have no question that if [REDACTED] had been employed in [REDACTED] [REDACTED], [REDACTED] that he would have been living in the home despite some difficulties the couple may have been experiencing. He returned to the home on a regular basis, for several days per week. He maintained a relationship with the entire family, slept in the home, and continued financing the entire family including the mortgage on the home. When [REDACTED]' work was terminated he returned to the family home. [REDACTED] was temporarily absent under the rules. He was, thus, part of the household under BC+ Eligibility Handbook Section 2.3 and his income should have been counted for the MA eligibility. It was not.

CONCLUSIONS OF LAW

The Department concedes that it should not have included the period from April 2012 through July 2012 as part of the overpayment. That amount should be deleted from the overpayment claim. Furthermore, petitioner's husband was only temporarily absent from the household during the overpayment period and his income should have been included in eligibility determinations during that period.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department with instructions to recalculate the MA overpayment to NOT include the period from April 1, 2102 onward, and to only include the period from February 2011 through March 2012. The Department shall issue new notice to petitioner with the new total claimed overpayment and new appeal rights. These actions shall be completed within 10 days.

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 4th day of September, 2013

\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 September 4, 2013.

Waushara County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
evas@drwi.org