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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MOP/146727

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 16, 2013, under Wis. Stat., §49.45(5), to review a decision by the Northern Income Maintenance Consortium to recover Medical Assistance (MA), a hearing was held on February 19, 2013, by telephone.

The issue for determination is whether petitioner's son was living with her.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Beulah Garcia  
Northern IM Consortium  
10610 Main St., Suite 224  
Hayward, WI 54843

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Illinois. She formerly resided in Vilas County.
2. Petitioner received BadgerCare Plus (BC+) MA in 2011 and 2012 with her teen age son as the only child in the household. Petitioner presented a court order granting the parents 50-50 placement of their son when she applied for BC+, and benefits were granted based upon the order.

3. In 2012 petitioner had a review. During the review the worker became aware that petitioner's son lived primarily with his father and attended high school in [REDACTED] approximately 70 miles from petitioner's residence. He lived in [REDACTED] with his father since at least 2010.
4. The worker determined that petitioner did not have 40% placement with her son during the period January 1, 2011 through November, 2012, and thus she was ineligible for BC+. By a notice dated December 24, 2012, the agency informed petitioner that she was overpaid \$12,108.76 in BC+ payments from January, 2011 through November, 2012, claim nos. [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 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 BC+, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. The BC+ 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.

In this case petitioner's son did not reside with her 40% of the time during the period in question. It does not matter that the court order provided for 50-50 placement. Eligibility is based upon which parent the child actually lives with unless the split is 60-40 or more. Since petitioner's son did not live with her 40% of the time, she was ineligible for BC+.

Petitioner testified that she did not know that she was ineligible. Her lack of knowledge is immaterial, however. Had she reported that her son was primarily living with his father, the matter would have been resolved regardless of her knowledge of the rules. The law requires the agency to recover an overpayment if the BC+ recipient fails to report information that would affect eligibility; the law does not require the failure to be intentional or fraudulent.

### **CONCLUSIONS OF LAW**

Petitioner was overpaid BC+ in 2011 and 2012 because she failed to report that her son was living with his father primarily.

**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 22nd day of February, 2013

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\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 February 22, 2013.

Wood County Human Services - WI Rapids  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability