



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/147741

PRELIMINARY RECITALS

Pursuant to a petition filed February 28, 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 [“County”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on March 25, 2013. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning petitioner’s wife: MOP-147743.

The issue for determination is whether the following 8 Claims can be established against petitioner for MA overpayments covering the time period May 1, 2010 to September 30, 2012 in the total amount of \$13,484.75:

- (1) Claim # [REDACTED]; May 1, 2010 to December 31, 2010; \$3,017.25;
- (2) Claim # [REDACTED]; January 1, 2011 to September 30, 2011; \$4,622.70;
- (3) Claim # [REDACTED]; October 1, 2011 to October 31, 2011; \$587.61;
- (4) Claim # [REDACTED]; November 1, 2011 to December 31, 2011; \$824.44;
- (5) Claim # [REDACTED]; January 1, 2012 to June 30, 2012; \$2,482.15;
- (6) Claim # [REDACTED]; May 1, 2010 to April 30, 2011; \$1,170.36;
- (7) Claim # [REDACTED]; May 1, 2011 to September 30, 2011; \$487.65; and,
- (8) Claim # [REDACTED]; November 1, 2011 to January 31, 2012; \$292.59.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Anwar A. Zaidi
555 Donofrio Dr Suite 75
Madison, WI 53719

Respondent:

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

By: Bonnie DeBauche, ES Supervisor
Theresa Sommerfeldt, ESS

Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

OTHER PERSON PRESENT:
Gurdeep K. [REDACTED], petitioner’s wife
Diane Van Asten, Fraud Investigator Aid

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. The County established the following 8 Claims against petitioner for MA overpayments covering the time period May 1, 2010 to September 30, 2012 in the total amount of \$13,484.75:
 - (1) Claim # [REDACTED]; May 1, 2010 to December 31, 2010; \$3,017.25;
 - (2) Claim # [REDACTED]; January 1, 2011 to September 30, 2011; \$4,622.70;
 - (3) Claim # [REDACTED]; October 1, 2011 to October 31, 2011; \$587.61;
 - (4) Claim # [REDACTED]; November 1, 2011 to December 31, 2011; \$824.44;
 - (5) Claim # [REDACTED]; January 1, 2012 to June 30, 2012; \$2,482.15;
 - (6) Claim # [REDACTED]; May 1, 2010 to April 30, 2011; \$1,170.36;
 - (7) Claim # [REDACTED]; May 1, 2011 to September 30, 2011; \$487.65; and,
 - (8) Claim # [REDACTED]; November 1, 2011 to January 31, 2012; \$292.59.
3. The 8 MA overpayment Claims detailed in *Findings of Fact #2*, above, resulted from the fact that, during the time period of the overpayments, petitioner failed to report all the income from his business known as [REDACTED]; the income petitioner failed to report came from illegal activity including illegal activity involving Electronic Benefit Transaction [“EBT”] cards in the Food Stamp [“FS”] program; on March 14, 2013 petitioner plead guilty to 3 criminal counts arising from this illegal activity and 17 other similar counts were dismissed but read into the record for sentencing purposes; petitioner had previously engaged in similar illegal activity in the state of Wyoming in 2001. See, *State of Wisconsin vs. [REDACTED] S. [REDACTED]* 2012 CF 000995 (Wis. Cir. Ct. Brown County March 14, 2013).
4. The County requested verification of the additional income petitioner received from the illegal activity; petitioner failed to provide the requested verification.

DISCUSSION

An overpayment of MA benefits may be recovered only in the following 3 circumstances:

- A. A misstatement or omission of fact by a person supplying information in an application for benefits;

B. The failure of an MA or BadgerCare 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; or,

C. The failure of an MA or BadgerCare 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.

Wis. Stat. § 49.497(1)(a) (2011-12); Wis. Admin. Code § DHS 108.03(3)(b) (May 2010); See also, *Badger Care + Eligibility Handbook* ["BC+EH"] 28.1.; *Medicaid Eligibility Handbook* ["MEH"] 22.2.1; BEM/DWS Operations Memo, No: 05-39, Date: 09/29/2005; and, BEM/DWS Operations Memo, No: 06-10, Date: 02/09/2006.

In this case petitioner failed to report income from his illegal activity. Petitioner does not deny this. Further, the County requested verification of the additional income petitioner received from the illegal activity and petitioner failed to provide the requested verification. Thus, petitioner is not eligible for MA for the time period in question. Wis. Admin. Code § DHS 102.02 (December 2008). Therefore, the County may the 8 Claims detailed in *Findings of Fact #2*, above, against petitioner.

Petitioner's representative admits there was fraud in 2012 but argues that there was no fraud in 2010 or 2011. However, the County representative testified that the County had evidence of fraud in 2010 and 2011 including records of EBT card use and statements from witnesses. Petitioner offered nothing to rebut this. In fact, although petitioner's representative questioned the County representatives, petitioner offered no evidence of his own.

CONCLUSIONS OF LAW

For the reasons discussed above, the County may the 8 Claims detailed in *Findings of Fact #2*, above, against petitioner for MA overpayments covering the time period May 1, 2010 to September 30, 2012 in the total amount of \$13,484.75.

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 19th day of April, 2013

\sSean P. Maloney
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 April 19, 2013.

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