



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/148369

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 26, 2013, under Wis. Stat., §49.45(5), to review a decision by the Jefferson County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on June 12, 2013, by telephone. Hearings set for April 30 and May 21, 2013 were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined that petitioner's husband should have been in her BadgerCare Plus (BC+) household.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Susan Zoellick  
Jefferson County Dept. of Human Services  
874 Collins Rd.  
Jefferson, WI 53549

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County. She formerly lived in Jefferson County.
2. Petitioner received BC+ MA for herself and two sons. In 2010 she moved to an address on [REDACTED] Street in [REDACTED]. She reported that her husband lived elsewhere.

3. In May, 2012 the agency received a referral from petitioner's property manager that her husband was living in the home. Following an investigation the agency determined that petitioner's husband had been in the home the entire time that petitioner lived at the [REDACTED] address.
4. The agency obtained petitioner's husband's wage information and recalculated eligibility retroactively. By a notice dated February 27, 2013, the agency informed petitioner that she was overpaid \$3,264.29 in BC+ from July, 2010 through June, 2012. The overpayment was broken down into a series of smaller claims nos. [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].
5. Petitioner's husband was in the residence on a daily basis, including the day that the investigator visited. He purportedly rented a room from petitioner's mother, but nevertheless was involved with his children regularly. Petitioner became pregnant with a third child with her husband in early 2012.

### 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....
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 BC+, a person must be under age 19 or a caretaker living with a child. Wis. Admin. Code, §DHS 103.03(1)(f)1. Parents living with their children must be included in the household's fiscal test group even if they are not receiving BC+. Wis. Admin. Code, §DHS 101.03(65).

The key to this case is not the father's relationship to petitioner, but to his children. If he was in the home, he had to be included in the BC+ fiscal test group, and if so, it is undisputed that his income would have made petitioner ineligible for BC+.

Every indication shows that this was a separation of convenience for benefit purposes. Petitioner never told her worker about this unusual situation with her husband, who stayed elsewhere but was present on a daily basis. Petitioner's husband's alternative address was a conveniently difficult one to verify. While usually the alternate address in cases such as this is a relative, this case is unusual in that the relative was his estranged wife's mother, a remarkable circumstance given that they allegedly separated because it was "too dangerous for my children" for the parents to stay together. See petitioner's statement received by the Division of Hearings and Appeals on June 7, 2013. The property manager told the investigator that petitioner's husband was there the entire time petitioner lived at the [REDACTED] Street address. While the property manager's statement is hearsay, it is corroborated by petitioner's admission that he was there every day and the fact that he was there when the investigator arrived. Petitioner had a third child

conceived during this period of estrangement, and as is very common in situations like these, petitioner reported that he was back in the home almost immediately after she realized that she was being investigated.

For purposes of the MA program, this was an intact family. I can find no separation from the children whatsoever. He should have been included in the MA household, and thus BC+ paid on petitioner's behalf was an overpayment. Petitioner argues that the claim should not go back to 2010, but that is the best date possible based upon the property manager's statement. Certainly petitioner's claim that he started spending more time there only in late 2011 has no more reliability than the property manager's statement.

This decision might have been easier if any of the witnesses, including the property manager, the neighbors, petitioner's sister, petitioner's mother, or petitioner's husband had actually testified. Without them I have to rely solely on the evidence given to me, and that evidence shades toward the conclusion that petitioner's husband was in the home.

### **CONCLUSIONS OF LAW**

The agency correctly determined that petitioner was overpaid MA because she failed to report that her husband was in the home.

**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 June, 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 June 19, 2013.

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