



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/148969

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Public Assistance Collection Unit [“PACU”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on May 23, 2013. At petitioner’s request a Hearing scheduled for June 18, 2013 was rescheduled.

The issue for determination is whether the following Claim can be established against petitioner for an alleged MA overpayment: Claim # [REDACTED]; November 1, 2012 to February 28, 2013; \$935.44.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Robert Klingforth, HSPC, Senior
PACU - 5173
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is now a resident of Arizona but previously was a resident of Wisconsin.
2. PACU established the following Claim against petitioner for an MA overpayment: Claim # [REDACTED]; November 1, 2012 to February 28, 2013; \$935.44.
3. The MA overpayment Claim detailed in *Findings of Fact #2*, above, allegedly resulted from the fact that petitioner moved to Arizona in September 2012 but allegedly failed to report to Wisconsin that she had done so.
4. On September 24, 2012 petitioner telephoned Wisconsin MA Member Services at 800-362-3002 and reported that she had moved to Arizona.
5. On October 1, 2012 petitioner telephoned Wisconsin MA Member Services at 800-362-3002 and reported that she had moved to Arizona.
6. On October 4, 2012 petitioner telephoned Wisconsin MA Member Services at 800-362-3002 and reported that she had moved to Arizona.

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 PACU maintains that petitioner never reported her move to Arizona because it has no record of such a report. However, petitioner testified credibly that she telephoned Wisconsin MA Member Service on 3 different occasions (September 24, 2012; October 1, 2012, and, October 4, 2012) and reported her move. Petitioner produced telephone records to that support

her testimony. PACU agrees that petitioner made the telephone calls to MA Member Services on the specific dates as she testified -- but maintains that during those telephone calls she did not report her move. However, the computer *Case Comments* notes produced by PACU fail to note any telephone calls at all on those dates. Exhibit #16. Thus, PACU records are, at best, incomplete. Therefore, the fact that PACU has no record of a report of petitioner's move is not convincing evidence that no report was made.

Finally, PACU argues: "Any declarations made to Member Services that are intended for The Department of Health Services (DHS) would need to be declared to DHS." However, the law requires only that petitioner report her move, it does not require that she report specifically to DHS. Further, at least 3 notices (dated August 1, 2012; September 5, 2012; and, October 22, 2012) sent to petitioner discuss "Your Reporting Rules" and under "Key Contacts" list the telephone number for MA Member Services (1-800-362-3002) -- no other telephone number is provided. Exhibits #2, #3 & #4.

CONCLUSIONS OF LAW

For the reasons discussed above, PACU may not establish the following Claim against petitioner for an alleged MA overpayment: Claim # [REDACTED]; November 1, 2012 to February 28, 2013; \$935.44.

THEREFORE, it is

ORDERED

That this matter be REMANDED to PACU, that, within 10 days of the date of this *Decision*, PACU take all necessary steps to reverse its claim that petitioner was overpaid MA in the total amount of \$935.44 for the time period November 1, 2012 to February 28, 2013 (Claim # [REDACTED]), and that DCHAA take no action to collect that Claim from petitioner.

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 11th day of June,
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 June 11, 2013.

PACU - 5173
Public Assistance Collection Unit
Division of Health Care Access and Accountability