



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/149238

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance (MA), a telephone hearing was scheduled for June 18, 2013. Following petitioner's subsequent requests to reschedule later proceedings, a telephone hearing was ultimately held on August 12, 2013, at Janesville, Wisconsin.

The issue for determination is whether it was correct to establish alleged overpayments of FS benefits for the time period of September 1, 2012 to October 31, 2012, and from January 1, 2013, to March 31, 2013, in the total amount of \$1,188.00.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: No Appearance

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.

2. On May 2, 2013, respondent notified petitioner that it had determined a MA overpayment to petitioner in the total amount of \$1,188.00, which was assigned Claim Nos. [REDACTED] and [REDACTED]. The form-letter notice and repayment agreement did not notify petitioner of any basis for the overpayment.
3. Petitioner timely appealed the overpayment on May 6, 2013.

DISCUSSION

The respondent may recover any overpayment of MA that occurs because 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 [BadgerCare].
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.

Wis. Stat. § 49.497(1).

Respondent failed to appear at the August 12, 2013, hearing in this matter, even though it was given proper notice. Documentary evidence was provided by the respondent prior to hearing, but as the respondent did not appear, none of the documents could be verified by respondent's representative, nor vetted by the petitioner. There is no verified evidence in the record of this matter to support the respondent's presumed allegation that petitioner failed to accurately report earned income. There is no evidence that the respondent accurately calculated petitioner's income and/or the amount of the overpayment. Petitioner appeared at the August 12, 2013, hearing and presented credible testimony that she did not fail to report her income as requested by petitioner.

The burden is on the respondent to show by a preponderance of the credible evidence that the overpayments occurred as alleged and that the amount of the overpayment claimed is accurate. Wis. Admin. Code § HA 3.09(4). The respondent has failed to do this. Consequently, the alleged overpayment cannot be sustained and must be reversed.

CONCLUSIONS OF LAW

The agency has not established that the petitioner received more medical assistance than she was entitled to from September 1, 2012, to October 31, 2012, and from January 1, 2013, to March 31, 2013, in the amount of \$1,188.00.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent with instructions that, within 10 days of the date of this decision, it cease any collection activity related to Claim Nos. [REDACTED] and [REDACTED], and rescind this overpayment claim as to 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 28th day of August, 2013

\sPeter McCombs
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 August 28, 2013.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability