



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/149308

PRELIMINARY RECITALS

Pursuant to a petition filed May 10, 2013, under Wis. Stat., §49.45(5), to review a decision by the Iron County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on July 3, 2013, by telephone.

The issue for determination is whether petitioner failed to report a household member out of the home.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[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 Iron County.
2. In 2012 petitioner received BadgerCare Plus (BC+) MA for her family including her husband.
3. At her 2013 annual review petitioner reported that her husband moved out on June 1, 2012. Petitioner filed for divorce on June 15, 2012.
4. By a notice dated February 7, 2013, the agency informed petitioner that she was overpaid \$1,390.46 in BC+ from July 1, 2012 through January 31, 2013, claim no. [REDACTED]. The

overpayment consisted of HMO capitation fees paid during those months for petitioner's husband. The notice said that a second notice would be issued that would include specific information concerning petitioner's right to appeal. The second notice was not sent, and thus petitioner's May 10, 2013 appeal cannot be found to be untimely.

DISCUSSION

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. When petitioner's husband moved out of her home, he no longer could be considered a custodial parent and thus he was ineligible for BC+.

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 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.

It is not disputed that petitioner failed to report her husband's absence to the agency until January, 2013. The issue is when petitioner realized that her husband was not returning. She testified that she thought he was working out of town until he told her he was not coming back, sometime after June 1. She only then filed for divorce.

I checked the State Circuit Court record. Petitioner filed for divorce on June 15, 2012. She thus should have reported the change, and her husband would have lost BC+ as of July 1, which is the date the overpayment at issue started. I conclude that the overpayment claim was correct. The failure to report does not have to be intentional or fraudulent; in this case it was an oversight by petitioner but it still leads to an overpayment claim.

CONCLUSIONS OF LAW

Petitioner was overpaid MA because she failed to report her husband out of the home timely.

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 8th day of July, 2013

\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 July 8, 2013.

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