



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/149958

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2013, under Wis. Stat., §49.45(5), to review a decision by the Waupaca County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on July 25, 2013, by telephone. The record was held open two weeks for petitioner to submit additional documentation; no additional documentation was received.

The issue for determination is whether petitioner was overpaid MA because he did not have sufficient placement of his son.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Susan Ziegeweid
Waupaca County Dept. of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County. He formerly lived in Waupaca County.
2. Petitioner began to receive BadgerCare Plus (BC+) MA for himself and his son in January, 2012. In 2013 the county was informed that petitioner's son has been on MA on his mother's case. The county began an investigation and determined that the child was with petitioner less than 40% of

the time. BC+ was closed effective February 1, 2013, and petitioner appealed. The Division of Hearings and Appeals upheld the determination with the finding that petitioner was ineligible for BC+ because he did not have sufficient placement of his son, Decision no. BCS-144776.

3. On May 2, 2013 the county sent petitioner a notice informing him that he was overpaid a total of \$10,319.63 in MA from January 1, 2012 through January 31, 2013, claim nos. 0900376170 and 1900376171.

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.
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.

To be eligible for BC+, a person must be under age 19, a custodial parent living with a child, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. Under BC+ policy, only one parent can receive BC+ as a caretaker if the parents are separated and have joint placement. BC+ Handbook, App. 2.2.1.2. If one of the parents has the child more than 60% of the time, that parent is considered the primary parent. If the parents have the child between 40-60% of the time, the Handbook provides a procedure to determine which parent will be considered the BC+ parent.

Generally the procedure to determine which parent is considered the BC+ parent only arises if both parents apply for the program. That is because the Handbook, App. 2.2.1.2, reads as follows:

If the child is not residing with both parents at least 40% of the time, only the parent with the greater percentage of the placement time may apply on behalf of the child and/or for him or herself as the caretaker relative of that child.

If only one parent of a child is applying for BC+ and he or she is stating that they have placement of the child for at least 40% of the time, accept the declaration unless it is questionable.

The policy clearly says that a parent must have 40% placement to be eligible for BC+ as a caretaker; if there is not 40% placement, the parent cannot even apply for BC+ as a caretaker parent.

In the prior hearing petitioner estimated that overall he had placement of the child 35% of the time. Now at this hearing petitioner testified that he had 40% placement in some of the months. I asked him to provide verification of his testimony, and the record was held open for two weeks. Nothing was received.

First, it is not at all clear that the BC+ placement policy can be broken down into individual months. The policy is meant to provide clarity on caretaker eligibility when the parents are separated. It is clear that the child's mother is the primary caretaker. The child is with petitioner only for traditional visitation periods for a non-custodial parent. It is evident that the policy is meant to cover a broad period of time in determining whether a parent has 40% placement. There is nothing in the Handbook suggesting that BC+ can be turned on and turned off during individual months where placement might rise above 40%.

Furthermore, the policy would require this petitioner to have at least 50% placement to be eligible. The Handbook, App. 2.2.1.2 provides: "If joint placement exists with a parent who lives in another state, the child must be with the Wisconsin parent at least 50% of the time in a month to qualify for BC+."

Finally, as noted above, petitioner did not verify his claimed placement even if placement could be broken down to individual months. I thus conclude that the county's overpayment claim was made correctly.

CONCLUSIONS OF LAW

Petitioner was overpaid MA because he did not have sufficient placement of his son to be eligible.

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 August, 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 August 19, 2013.

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