



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/150131

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 18, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dunn County Department of Human Services in regard to Medical Assistance, a hearing was held on July 25, 2013, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of medical assistance.

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: Linda Halvorson

Dunn County Department of Human Services  
808 Main Street  
PO Box 470  
Menomonie, WI 54751

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. The county agency contends that the petitioner was overpaid \$6,384.76 in medical assistance from January 1, 2012, through January 31, 2013, because his wife failed to report income to the

agency. This overpayment represents the capitation fees paid on behalf of the petitioner and his spouse.

3. The petitioner's spouse began working as a caregiver in January 2011.
4. The petitioner's spouse earned \$38,539 in 2011 and \$39,943 in 2012. Her average monthly earnings were \$3,328.58 in 2011 and \$3,328.58 in 2012.
5. For a family of three, the size of the petitioner's, 200% of the federal poverty level in 2012 was \$38,180 or \$3,181.67 per month. <http://aspe.hhs.gov/poverty/12poverty.shtml>.
6. The petitioner's spouse reported her employment to the county agency in time for it to act upon the additional household income.

### DISCUSSION

Medical assistance rules state that the Department "may" recover any overpayment 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).

The county agency contends that the petitioner's household received a total of \$6,384.76 in medical assistance from January 1, 2012, through January 31, 2013, because it failed to report new employment to the agency. BadgerCare Plus provides medical assistance coverage to children under 19 and their parents or caretakers. Wis. Stat. § 49.471; *BadgerCare Plus Eligibility Handbook*, § 2.1. Unless they are pregnant, adults are ineligible if their household income exceeds 200% of the federal poverty limit. Wis. Stat. § 49.471(4)(a). Recipients must report any change of income that affects their benefits to the agency by the 10<sup>th</sup> day of the month following the change. *BadgerCare Plus Eligibility Handbook*, § 27.3.

It is undisputed that the petitioner's wife began working in January 2011, and that this income exceeded 200% of the federal poverty level. There was no overpayment alleged for 2011 because the household was on a BadgerCare Plus extension that continued until the end of that year. When that extension ended, the income should have made the adults in the household ineligible for the program. It is undisputed that the program made \$6,384.76 in per capita payments on their behalf during the period of the alleged overpayment. This means that the only issue is whether the petitioner's wife called the agency to report this income.

I am skeptical of her claims that she did because there is no notation of a call either to the change center in Janesville or the office in Dunn County. On the other hand, she does specifically remember facts such as being excited and talking about her new job with the worker. No workers from either the change center or the county agency testified, so there is nothing to contradict her statement. In addition, she filed a 2011 tax return in March 2012, so it does not appear that she was hiding her income; because she is self-employed and cares for a woman who is over 100 years old, she probably could have hidden this income

if she wanted to. This is a close case, but the preponderance of the credible evidence supports the petitioner. As a result, I find that the overpayment must be overturned.

**CONCLUSIONS OF LAW**

The agency cannot recover the alleged overpayment because the preponderance of the credible evidence is that the petitioner's spouse reported her income to the agency.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it end its attempt to recover the alleged overpayment discussed in this decision and to take all steps necessary to remove the finding of an overpayment from the petitioner's record.

**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 1st day of August, 2013

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\sMichael D. O'Brien  
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 1, 2013.

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