



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/150184

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Portage County Department of Human Services in regard to Medical Assistance/MAPP, a hearing was held on July 31, 2013, at Stevens Point, Wisconsin.

The issue for determination is whether the petitioner was overpaid \$4,500 in MAPP benefits from December 2010 through May 2011.

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: Tammy Porter, Elderly Services Spec.
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.
2. The petitioner was on the MAPP program prior to November 2010, and continued on the program from at least December 2010 through May 2011. MAPP is a subset of the Wisconsin Medical Assistance program for disabled persons.

3. Prior to November 2010, the petitioner was not receiving a pension from [REDACTED]. Beginning November 1, 2010, he began receiving a monthly gross pension from [REDACTED] of \$257.19.
4. The agency asserts that the petitioner did not report the commencement of the pension. The agency continued the petitioner's MAPP certification (the case underwent a review in October 2010) from November 2010 through May 2011, with no premium liability.
5. The petitioner was required to report his income increase within 10 days (*i.e.*, in early November 2010). If the petitioner's [REDACTED] pension had been included in his income budgeting from December 2010 through May 2011, the result would have been that he would have had to pay a \$750 MAPP monthly premium in each of those months. The total for the six months would have been \$4,500.
6. On May 29, 2013, the Department issued a *Notice and Repayment Agreement for Medical Assistance* to the petitioner. It advised that he had been overpaid MAPP benefits of \$4,500. *See*, Exhibit 2.
7. The petitioner submitted a copy of his November 2010 pension check at the county agency's reception desk in November 2010. After receiving a notice in late October 2010 regarding ongoing MAPP eligibility, the petitioner did not receive another notice from agency, showing his income, until May 10, 2011. *See*, Exhibit 4, correspondence history.

DISCUSSION

DHS is legally required to seek recovery of incorrect MA payments when a recipient engages in a misstatement or omission of fact to the MA program, which in turn gives rise to an MA overpayment:

49.497 Recovery of incorrect medical assistance pay-

ments. (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 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.
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*** for the recipient's cost-sharing requirements.

(b) The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted ...

(emphasis added)

Wis. Stat. §49.497(1). See also, *Medicaid Eligibility Handbook*, 22.2.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

In this case, MA payments were clearly, incorrectly made on the petitioner's behalf from December, 2010 – May 2011. There is no dispute that the petitioner's income caused him to be subject to a MAPP premium of \$750 during these months.

Thus, the remaining issue in this case is whether the petitioner's overpayment resulted from "... failure of a Medical Assistance ... recipient ... to report any change that in the recipient's ... eligibility characteristics that would have affected the recipient's eligibility for benefits." An income change is to be reported within 10 days. *MEH*, §12.1. I found that the petitioner did timely report the income change in November 2012. The petitioner testified that he brought the first pension check to the agency's reception desk at the Whiting Avenue address, where a worker made a copy of it. His daughter, who drove him to the agency on that date, corroborated his testimony. With the parties' permission, I also checked the Department's Correspondence History database, to determine whether the petitioner was issued any notice by the Department from November 1, 2010 through April 30, 2011, listing the income budgeted for his case. If he had been issued a notice showing the wrong income, I would have held him responsible for not making a second report to correct the income. However, no such notice was issued until May 10, 2011, which was too late to affect the months in the overpayment period here. Thus, he did not fail to report. I conclude that the statutory requirement for overpayment collection has not been met, and the overpayment is therefore not recoverable.

CONCLUSIONS OF LAW

1. The petitioner was overpaid MAPP benefits of \$4,500 for the December 2010 through May 2011 period.
2. The Department may not recover the petitioner's Medical Assistance/MAPP Plus overpayment for the December 2010 – May 2011 period, because the petitioner did not fail to report his income change.

THEREFORE, it is

ORDERED

That the petition is remanded to the county agency with instructions to cease recovery efforts for claim # [REDACTED], within 10 days of the date of this Decision.

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 31st day of July, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 1, 2013.

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