



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/150273

PRELIMINARY RECITALS

Pursuant to a petition filed June 24, 2013, under Wis. Stat., §49.45(5), to review a decision by the Marathon County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on July 25, 2013, by telephone.

The issue for determination is whether petitioner was overpaid MA because she lived with her child's father.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Maikou Yang
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner resides with her three children with whom she received BadgerCare Plus (BC+) MA. The father of the youngest child is P.W.
3. On June 6, 2012, petitioner reported that she had moved to a new address. Although she did not say so, the new address was P.W.'s residence. Later in 2012 petitioner and P.W. reported to the paternity court that they lived together. The county requested an investigation on petitioner's

residence, and the investigation concluded that petitioner and P. W. lived together since November, 2011.

4. The agency obtained P.W.'s income information and determined that if they lived together, the household was overpaid MA from January through November, 2012.
5. By a notice dated June 4, 2013, the agency informed petitioner that she was overpaid \$1,780 in MA from January 1 through November 30, 2012, claim no. [REDACTED].
6. Petitioner and P.W. did not move in together until June, 2012.

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.

Under BC+ anyone in the home who meets the criteria of being in the BC Plus test group is always included in the group whether or not he or she requested BC Plus. BC Plus Handbook, Appendix 2.2. A co-parent is always part of the BC Plus group under this policy, even if there are other children in the household who are not his. Handbook, App. 2.2.1. This policy mirrors the Wisconsin Administrative Code definition of "fiscal test group" found at Wis. Adm. Code, §DHS 101.03(65).

The issue is when petitioner started to live with P.W. The issue already was addressed by this judge in a prior fair hearing, case no. FOP/149384, decided July 1, 2013. In that decision concerning Food Share I concluded that petitioner failed to report P.W. in her household, but that she did not move in with him until June, 2012. I will make the same finding in this case. The overpayment would begin July 1, 2012 because that is the date the change would have been effective had petitioner reported it.

CONCLUSIONS OF LAW

Petitioner was overpaid FS because she was living with her child's father, but only for the months beginning July, 2012.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to amend overpayment claim no. [REDACTED] to include only MA payments in the months of July through November, 2012, and to rescind the overpayment for the months of January through June, 2012. The county shall take the action and inform petitioner of the new claim amount within 10 days 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 26th 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 26, 2013.

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