



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/150522

PRELIMINARY RECITALS

Pursuant to a petition filed July 06, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on August 12, 2013, at La Crosse, Wisconsin. At the request of the parties, the record was held open for petitioner to submit new evidence to the county agency, for the county representative to review that new evidence and issue a reconsideration summary, and for a response by petitioner. Mr. Miller submitted a timely, detailed reconsideration to DHA and petitioner. Petitioner timely submitted her response to DHA. Both documents are received into the hearing record.

The issue for determination is whether the county agency met its burden of proof to establish that it acted correctly to seek recovery from the petitioner of alleged MA overpayments of \$21,253.78 during the period of December, 2008 through April, 2013.

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: Tom Miller, supervisor

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County La Crosse County who received BadgerCare (BC) Plus and FoodShare (FS) and benefits for a household of two (petitioner and her son, DAW).
2. The petitioner is divorced from her husband [REDACTED] [REDACTED] [REDACTED] who is the father of DAW. See La Crosse Circuit Court No. 00 PA 95.
3. During April, 2013, the county agency became aware that petitioner's child, DAW, was not residing with petitioner at least 40% of the time, but instead was residing the majority of the time with his father.
4. The petitioner's BC household has received BC benefits for petitioner and her son during the period of February, 2008 through April, 2013.
5. The county agency sent a May 2, 2013 BadgerCare (BC) Overpayment Notice to the petitioner stating that petitioner was overpaid BC in the total amount of \$21,253.78 during the period of February, 2008 through April, 2013, due allegedly to client error of failing to report to the county agency her child primarily resided with his father and was not residing with petitioner at least 40% per month.
6. The petitioner did not establish with any reliable evidence that she has at least 40% custody and placement of DAW for BC eligibility benefit purposes per BadgerCare Handbook, 2.2.1.2, "Joint Placement."
7. In his well-written August 16, 2013 reconsideration statement, supervisor Tom Miller stipulated after reviewing the new evidence that: "the agency would conclude now that the Medicaid overpayment was a **non-client error** since it had a copy of the Court Order stating the hours of petitioner's custody of her child but did not act upon that information until April, 2013." (Emphasis added). See above Preliminary Recitals.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

Recovery of incorrect medical assistance payments. (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.

Pursuant to this grant of authority, the department's Medicaid Eligibility Handbook, Appendix 22.2.1.1, provides that counties are to initiate recovery of MA overpayments caused by:

1. Misstatement or omission of facts by a member, or any person responsible for giving information on the member's behalf, at a Medicaid application or review.
2. Failure on the part of the member, or any person responsible for giving information on the member's behalf, to report changes in financial (income, assets, expenses, etc.) or non-financial information that affects eligibility, premium, patient liability or cost share amount.

The MA overpayment must be caused by the client's error. MA Overpayments caused by agency error are not recoverable.

During the August 12, 2013 hearing, the county agency representative did establish that petitioner did not have at least 40% custody and placement of DAW during the overpayment period in question per BadgerCare Handbook, 2.2.1.2, "Joint Placement." However, as indicated in Finding of Fact #7, after hearing the petitioner's testimony and reviewing the new evidence, the county representative stipulated in his reconsideration that the MA overpayment was due to non-client error.

The MA overpayment must be caused by the client's error. MA Overpayments caused by agency error are not recoverable. As result, the county agency had no legal right to pursue the MA overpayment against the petitioner set forth in Finding of Fact #5 above, based upon the limitations for MA recover set forth in Wis. Stat., §49.497(1) and Medicaid Eligibility Handbook, Appendix 22.2.1.1. Accordingly, based upon the above, I conclude that the county agency failed to meet its burden of proof to establish that it acted correctly in seeking recovery from the petitioner of alleged MA overpayments of \$21,253.78 during the period of February, 2008 through April, 2013, pursuant to Wis. Stat., §49.497(1).

CONCLUSIONS OF LAW

1. The county agency did not meet its burden of proof to establish that it acted correctly in seeking recovery from the petitioner of alleged MA overpayments of \$21,253.78 during the period of February, 2008 through April, 2013 because the overpayment was due to non-client error.
2. The county agency failed to establish a prima facie case that it was correctly seeking to recover alleged MA overissuances to the petitioner based upon the requirements of sec. 49.497(1), Wis. Stats.

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to cease all efforts to recover the alleged MA overpayments made to the petitioner during the period of February, 2008 through April, 2013 (as set forth in Finding of Fact #5 above, 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 21st day of October, 2013

\sGary ■ Wolkstein
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 October 21, 2013.

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