



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAC/150993

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2013, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Columbia County Health & Human Services in regard to Medical Assistance (MA), a hearing was held on September 3, 2013, at Portage, Wisconsin.

The issue for determination is whether the Department has incorrectly determined that the petitioner is not paying on a MA overpayment liability.

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: Jeanette Gessner, ES Spec.
Columbia County Health & Human Services
2652 Murphy Rd
PO Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County.
2. The petitioner received MA benefits from at least July 2011 through October 2012. She failed to report income to the agency during this period, and a \$3,685.59 overpayment for the period

resulted. A *Medicaid/BadgerCare Overpayment Notice* was issued to the petitioner on October 17, 2012, advising that she had been overpaid \$1,780.57 for July through December 2011. Another MA overpayment notice was issued to the petitioner on February 8, 2013, advising that she had been overpaid \$1,905.02 for the January through October 2012 period. These notices were followed by repayment agreements (November 2, 2012 and March 4, 2013) and dunning letters (December 4, 2012, January 3, 2012, and March 4, 2013). The petitioner did not respond to these documents.

3. The Department issued an *Order to Compel Payment of Liability* to the petitioner on June 14, 2013.
4. The petitioner has made no payments towards the \$3,685.59 overpayment.

DISCUSSION

Following issuance of an MA overpayment notice, a person who then fails to enter into or adhere to a repayment agreement may be subject to an order to compel payment of that liability:

49.497(1m)(a) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under [ch. 227](#) by filing with the department a request for a hearing within 30 days after the date of the order. *The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.*

(emphasis added)

Wis. Stat. §49.497(1m)(a).

The petitioner does not contest that she has not entered into a repayment agreement. She also did not contest that she has not made payments against the MA overpayment liability. Because there is no factual dispute that the petitioner has not repaid the overpayment, and has not entered into a repayment agreement by the time of hearing, there is no issue for this administrative law judge to decide herein.

The petitioner also filed a fair hearing request regarding a tax refund interception action related to a Foodshare overpayment. That matter will be decided in a separate decision, as the applicable rules are different than those applied here.

CONCLUSIONS OF LAW

1. Because there is no factual dispute that the petitioner has not repaid the overpayment, and has not entered into a repayment agreement by the time of hearing, there is no issue for this administrative law judge to decide herein.
2. The Department may proceed with its collection activity for these MA overpayment claims.

THEREFORE, it is

ORDERED

That the petition is 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 10th day of September, 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 September 10, 2013.

Columbia County Health & Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability