



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/151438

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 16, 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 September 17, 2013, by telephone.

The issue for determination is whether petitioner reported that she intended to move to Colorado in August, 2012.

**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. In 2012 petitioner and her husband received BadgerCare Plus (BC+) MA for their family. They had a review in May, 2012, and on July 18, 2012 the agency sent them a notice confirming the BC+ would continue for their child but not the parents.

3. Soon after that notice petitioner contacted the call center and reported that the family was moving to Colorado. No record exists of the call, and the agency did not close BC+ for the child. No additional notices were sent by the agency until 2013.
4. In May 2013 the agency sent petitioner a notice of the need to complete a review. The notice was returned by the postal service.
5. In early June petitioner wrote to her worker and reported that she intended to move back to Wisconsin in July, 2013.
6. By a notice dated August 1, 2013, the agency notified petitioner that she was overpaid \$593.72 in MA payments from August 1, 2012 through June 30, 2013, claim no. [REDACTED]. The overpayment consisted of HMO premiums paid on the child's behalf during that period.

### **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.

I conclude that the overpayment was caused by agency error. Although typically I am reticent to accept testimony alleging that a change was reported when there is absolutely no record of the report, in this case the testimony is believable. Petitioner described the conversation in some detail, and her husband testified that he heard her speaking to the worker on phone, and he also provided detail that made the testimony credible (for example he heard his wife telling the person where in Colorado they were moving and that it was because she got a job there). Given that the call would have been made to a general call center, and not to a worker assigned to the case, it is possible that the person who took the call failed to act on it. The overpayment thus should be rescinded.

### **CONCLUSIONS OF LAW**

The overpayment in this case was caused by an agency worker's failure to act on petitioner's report that the family was moving out of state in August, 2012.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to rescind BC+ overpayment claim no. [REDACTED] against petitioner and her husband, and to cease recovery of it. The agency shall take the action 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 23rd day of September, 2013

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\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 September 23, 2013.

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