



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/151689

PRELIMINARY RECITALS

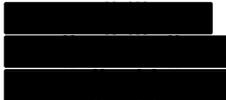
Pursuant to a petition filed August 23, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on September 23, 2013, at Racine, Wisconsin.

The issue for determination is whether the agency (the Racine County Department of Human Services) correctly determined that Petitioner was over-issued health care benefits from June 1, 2010 to April 30, 2011 and from October 1, 2011 to March 31, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Patricia Delessio
230 West Wells Street Room 800
Milwaukee, WI 53203

Respondent:

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

By: Dean Landvatter, Fraud Coordinator
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Racine County.

2. On August 7, 2013, the agency sent Petitioner a notice indicating that he was overpaid Medicaid/BadgerCare benefits in the amount of \$1,235.10 from June 1, 2010 to April 30, 2011 and in the amount of \$630.40 from October 1, 2011 to March 31, 2012. (Exhibit U)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 23, 2013. (Exhibit 1)
4. At all times relevant, Petitioner lived at and continues to live at [REDACTED] in Racine. (Exhibit 1, Testimony of Petitioner)
5. At all times relevant, Petitioner's wife, [REDACTED], used the [REDACTED] address as her mailing address. (Testimony of [REDACTED])
6. At all times relevant [REDACTED]'s cats lived at the [REDACTED] address. (Testimony of Petitioner and [REDACTED])
7. [REDACTED] owns the residence on [REDACTED]. (Testimony of Petitioner, [REDACTED] and [REDACTED] Wood, Petitioner's sister; See Exhibit D)
8. At all times relevant, [REDACTED] was living with Petitioner's sister, [REDACTED] Avenue. (Testimony of Petitioner, [REDACTED] and [REDACTED])

DISCUSSION

“Spouses who live together are in each other’s fiscal group. This means that the income and assets of both spouses are counted when determining Medicaid eligibility for either or both spouses.” *Medicaid Eligibility Handbook §15.1.1* It is the agency’s contention that Petitioner and his wife lived together between June 1, 2010 and March 31, 2012, and as such, her income should have been counted when determining Petitioner’s eligibility for healthcare benefits. The agency further asserts that because Petitioner’s wife’s income was not taken into consideration, an overpayment of healthcare benefits occurred.

The agency argued that because [REDACTED] used the [REDACTED] address as her mailing address, kept her vehicles there and kept her cats there, that she must have been living at the [REDACTED] address.

Petitioner contests the agency’s assertion that his wife lives with him. Petitioner asserts that his wife and he have been informally separated and that she lives with his sister, [REDACTED].

Petitioner’s sister [REDACTED] appeared at the hearing and testified that she lives out of state, but calls [REDACTED] regularly and visits for extended periods of time, twice a year. [REDACTED] testified that to her knowledge, [REDACTED] was living with [REDACTED] during the time in question and was present during [REDACTED]’s visits with [REDACTED] and would sometimes answer the phone, when [REDACTED] would call [REDACTED].

[REDACTED] appeared at the hearing and testified that Petitioner and she have been separated since early 2010, because they “do not get along”. [REDACTED] testified that in early 2010 she moved in with [REDACTED] and [REDACTED]’s husband at an address located on Park Avenue, but that she has continued to use the [REDACTED] residence as her mailing address. [REDACTED] testified that Petitioner and she are civil enough to each other that she can return to the residence periodically to feed the cats that she needed to leave behind because [REDACTED]’s husband does not like the cats and neither does [REDACTED]’s dog. In addition, [REDACTED] indicated that there is no room at [REDACTED]’s residence for her to keep her vehicles.

[REDACTED] testified that Petitioner continued to reside at the residence on [REDACTED], because the residence used to belong to Petitioner’s parents. [REDACTED] testified that Petitioner’s parents deeded the residence to her and to Petitioner’s sister, [REDACTED], because Petitioner was not deemed responsible enough

to care for the property on his own. (See Exhibit D; Testimony of [REDACTED]) [REDACTED] testified that [REDACTED] later surrendered her interest in the residence. (Id.)

[REDACTED]'s testimony that she and Petitioner do not get along well enough to live together is corroborated by a police report that has been marked as Exhibit H. The report indicates that police were called to the [REDACTED] residence in April 2010, because Petitioner and [REDACTED] were arguing and that the dispute was resolved by [REDACTED] gathering her clothing and leaving. (Exhibit H, pg. 1) In addition, a report prepared by Investigator Thomas Sweet, corroborates [REDACTED]'s testimony. Mr. Sweet's report indicated that Mr. Sweet spoke to [REDACTED]'s mother, who told Mr. Sweet that [REDACTED] stayed with her off and on for a day or two at time, when [REDACTED] and the Petitioner would have a "blow up". Mr. Sweet's report also indicates Petitioner "appeared to be under the influence of alcohol or drugs" when Mr. Sweet attempted to interview him. (Exhibit 3)

[REDACTED] gave credible testimony that is corroborated by the testimony from Petitioner's other sister, [REDACTED] and by exhibits provided by the agency. Further, any additional evidence the agency might have to the contrary has either been explained by [REDACTED] or is purely hearsay. Indeed, no one with first-hand knowledge testified that [REDACTED] was living with Petitioner.

The agency provided a FoodShare renewal from September 2011 that had a handwritten correction on it, changing [REDACTED]'s residence from Old Mill Drive to the [REDACTED] address and that had the [REDACTED] address written in as her mailing address. In addition, the agency provided a letter from Gateway Technical College stating that [REDACTED] had reported the [REDACTED] address to be her address from December 2011 to the present. However, the Supreme Court has stated that in administrative hearings, uncorroborated hearsay cannot form the sole basis of a finding of fact when controverted by in-person testimony. *Gehin v. Wisconsin Group Insurance Board*, 278 Wis.2d 111 at ¶¶80-82 and ¶110. See also *Division of Hearings Appeals Decision on Rehearing CCB-51/102350 and CCO-51/103291*. As discussed above, [REDACTED] testified credibly that she continued to use the [REDACTED] address as her mailing address, but did not actually reside there and did not write in the [REDACTED] address as her residence on the September 2011 renewal.

Based upon the foregoing, it is found that the agency has not met its burden to prove that [REDACTED] was living with Petitioner between June 1, 2010 and March 31, 2012. As such, there is no basis upon which to assert an overpayment, at this time.

CONCLUSIONS OF LAW

The agency did not correctly determine that Petitioner was over-issued health care benefits from June 1, 2010 to April 30, 2011 and from October 1, 2011 to March 31, 2012.

THEREFORE, it is

ORDERED

That the agency rescind the August 7, 2013, Medicaid/Badgercare Overpayment notice, claim [REDACTED] and that it cease collection efforts. The agency shall take all administrative steps to complete these tasks within ten 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 Milwaukee,
Wisconsin, this 8th day of October, 2013.

\sMayumi M. Ishii
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 8, 2013.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
pdl@legalaction.org