



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAC/152674

PRELIMINARY RECITALS

Pursuant to a petition filed October 8, 2013, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Wood County Human Services – Wis. Rapids in regard to Medical Assistance (MA), a hearing was held on December 10, 2013, by telephone. A hearing set for November 14, 2013, was rescheduled at the petitioner's request.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Beulah Garcia, Resolution Coordinator
Northern IM Consortium

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Forest County.
2. The petitioner received MA/BadgerCare Plus (BCP) benefits from at least March through October 2012. She failed to report all income to the agency during this period, and a \$1,771 overpayment for the period resulted. A MA/BCP overpayment notice was issued to the petitioner on November 2, 2012, and was followed by a repayment agreement (November 1, 2012) and

dunning letters (December 3, 2012, January 3, 2013, and February 1, 2013). The petitioner did not respond to these documents.

3. On February 19, 2013, the petitioner belatedly filed a hearing request to challenge the overpayment amount. In DHA Decision No. MOP/147525, Administrative Law Judge Schneider of this office dismissed the appeal on April 17, 2013, as untimely filed. Thus, the overpayment collection went forward. Department worker Beulah Garcia appeared at the above hearing, and noticed that a portion of the overpayment calculation for March through June 2012 was incorrect, due to failure to account for the petitioner's pregnancy. She voluntarily recalculated the overpayment downward before pursuing further collection.
4. The Department issued an Order to Compel Payment of Liability in the amount of \$1,440.40 to the petitioner on October 4, 2013. Exhibit 3.
5. The petitioner has made no payments towards the \$1,433.40 overpayment.

DISCUSSION

Following issuance of an MA/BCP 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 was overpaid, that she has not entered into a repayment agreement, and that she has not made a payment against the revised claim. She testified that she thought she had won the overpayment appeal with Judge Schneider because the Order dismissed her appeal. Her thought on that matter was incorrect. 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.

CONCLUSIONS OF LAW

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

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, Room 651, 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 31st day of December, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 January 2, 2014.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability