



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MAC/152785

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 10, 2013, under Wis. Stat., §49.497(1m)(a), to review a decision by the Public Assistance Collection Unit to issue an order to compel payment to recover a Medical Assistance (MA) overpayment, a hearing was held on November 6, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the PACU can compel payment of a public assistance debt.

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: Dean Landvatter  
Racine County Dept. of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She formerly resided in Racine County.
2. Petitioner was notified of a \$10,697.77 MA overpayment by a notice dated January 24, 2013, claim nos. [REDACTED] and [REDACTED], for the period November 1, 2012 through January 31, 2013. The notice was to petitioner's address that was known to the agency; however, petitioner

had moved out of that address recently and only her boyfriend (the father of her 19-year-old daughter) remained. At least three “dunning” notices were sent later.

3. On October 4, 2013, the PACU sent petitioner an Order to Compel Payment of Liability. Records showed that no payment on the claim had been made.

### **DISCUSSION**

Wis. Stat., §49.497(1m)(a) provides that if, after notice of incorrect payment is made, a recipient who is liable for an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment than the State of Wisconsin may bring an action to enforce the liability or may issue an order to compel payment of the liability. In this case the department has issued an order to compel payment of the liability. Petitioner can appeal, but according to the law the only issues that can be addressed are whether she paid off the overpayment, or whether she has entered into a repayment agreement and complied with it.

Petitioner filed this appeal to contest whether she owes the money at all. According the Wisconsin statute that the Division of Hearings and Appeals does not have authority to contradict, I cannot reach the merits of overpayment claim. The issues in a case such as this one are limited as described above. Thus I must conclude that the PACU correctly issued an Order to Compel for the amount due.

I note, however, that even on the merits petitioner likely would not succeed. The overpayment arose because petitioner received three months’ continued benefits when she appealed the termination of BadgerCare Plus (BC+) after her daughter turned age 19. Petitioner reports now that her daughter moved out in late December, 2012 leaving petitioner’s young grandchild behind. The problem is that for the months of November and December, petitioner’s daughter would be considered the primary caretaker of the child, so petitioner would not have been eligible for BC+ as she was not the caretaker of a minor child. For January petitioner would have had to report that her daughter moved out and that she was caring for the minor child, but she never made the report so the agency could not determine eligibility. A change can be made on a case only after it is reported, so on the merits a judge could not go back and change eligibility for BC+ in January, 2013.

Petitioner still can file an appeal alleging that she was not overpaid; she would first have to convince a judge she did not receive the overpayment notice or otherwise know about it prior to receiving the Notice to Compel, and then she would have to convince the judge that she was eligible for BC+ despite what I wrote about in the prior paragraph.

Finally the father of petitioner’s daughter also would be liable for the overpayment because he was an adult member of the overpaid household.

### **CONCLUSIONS OF LAW**

The PACU correctly issued an Order to Compel Payment of Liability for an MA overpayment for a 2012-2013 MA overpayment.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 11th day of November, 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 November 11, 2013.

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