



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAC/152651

PRELIMINARY RECITALS

Pursuant to a petition filed October 08, 2013, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on December 18, 2013, at Janesville, Wisconsin. At the request of petitioners, the hearing set for November 27, 2013 was rescheduled. At the start of the December 18, 2013 hearing, both [REDACTED] and [REDACTED] confirmed on the record that they wanted to consolidate their two appeals into this one hearing and one decision.

The issue for determination is whether petitioner has failed to timely repay an MA overpayment from the period of October 1, 2012 to December 31, 2012 to warrant the issuance of an Order to Compel Payment.

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, Room 651
Madison, Wisconsin 53703

By: Laura Middleton, overpayment specialist
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County who resides with her ex-husband, [REDACTED] and their two children at [REDACTED].
2. During the December 18, 2013 hearing, petitioner confirmed that she and [REDACTED] moved to the following new address as of about October 31, 2013: [REDACTED] and [REDACTED] [REDACTED] [REDACTED].
3. The Department of Health Services (DHS) sent a February 20, 2013 Notice of Medicaid Overpayment to both [REDACTED] and [REDACTED] concerning an MA overpayment during the period of October 1, 2012 to December 31, 2012 in the amount of \$1,278.00, due to failure to timely report new employment and income for both [REDACTED] and [REDACTED]. See Exhibit 1. Petitioner admitted receiving Exhibit 1. The \$1,278 was caused by net paid Medicaid for petitioner and [REDACTED], net capitation payments for [REDACTED] and [REDACTED], and unpaid BadgerCare premiums for their two children.
4. The county agency then sent a March 4, 2013 written Notice of Repayment Agreement for Medical Assistance Overpayment to both [REDACTED] and [REDACTED]. The petitioner did not sign nor comply with the repayment agreement by not making any of the required payments.
5. The Department sent Dunning notices to the petitioners on April 1, 2013, May 1, 2013, and June 3, 2013.
6. The petitioner did not timely appeal the February 20, 2013 MA overpayment notices to the [REDACTED] or [REDACTED] to the Division of Hearings and Appeals (DHA) within 45 days of the date of the February 20, 2013 MA overpayment notice.
7. The Department's Public Assistance Collection Unit (PACU) sent October 4, 2013 notices to both [REDACTED] and [REDACTED] entitled *Notice Of Administrative Action*; enclosed with the notice was an *Order to Compel Payment of Liability* and an *Affidavit of Collector* both October 4 2013; all of this concerned the MA overpayment claims established against [REDACTED] and [REDACTED] in the total amount of \$1,278.00 concerning the period of October 1, 2012 to December 31, 2012.
8. The petitioner faxed an October 8, 2013 appeal letter to DHA which was received at DHA on October 8, 2013. That appeal was not timely to address the MA overpayment issue, because it was not filed within 45 days of the date of the February 20, 2013 overpayment notice. However, the October 8, 2013 appeal was timely to address the October 4, 2013 Order to Compel.
9. The petitioner's remaining MA overpayment was approximately \$1,278 as of the December 18, 2013 hearing date as neither [REDACTED] nor [REDACTED] made any payment toward the MA overpayment.

DISCUSSION

Following issuance of an MA/MAPP 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.

Wis. Stat. §49.497(1m)(a).

The above law indicates 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. Wis. Stat. § 49.497(1m)(a) (2007-08). In this case the State of Wisconsin has correctly issued an order to compel payment of the liability. The petitioner has appealed the order to compel, but according to the law the only issue that can be addressed is whether he/she paid off the overpayment, or whether he/she has entered into a repayment agreement and complied with it.

During the December 18, 2013 hearing, [REDACTED] argued that she attempted to discuss the MA overpayment with her ESS worker, but alleged that the ESS worker did not return her phone calls. The petitioner attempted to argue that she should be permitted to also appeal the underlying MA overpayment. However, petitioner admitted that she received the February 20, 2013 MA overpayment and the notice indicated that she had 45 to file an appeal of that overpayment. Petitioner also failed to establish with any reliable evidence that she entered into a repayment agreement or made any payment toward the MA overpayment. Furthermore, petitioner failed to establish that she/he timely filed with DHA an appeal regarding the February 20, 2013 MA overpayment notice. See Finding of Fact #3 above. DHA did not receive from the petitioner any appeal prior to October 8, 2013.

As explained above, petitioner was sent a repayment agreement, but petitioners failed to sign or make the required monthly payments from that March 4, 2013 repayment agreement. Thus, I must conclude that the PACU correctly issued an Order to Compel for the \$1,278 remaining due as of the December 18, 2013 rescheduled hearing date.

CONCLUSIONS OF LAW

The Department's Public Assistance Collection Unit (PACU) correctly issued to the petitioner an Order to Compel Payment of Liability for an MA overpayment for an October 1, 2012 to December 31, 2012 MA overpayment.

THEREFORE, it is

ORDERED

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, 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 27th day of January, 2014

\sGary M. Wolkstein
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 January 27, 2014.

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