



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAC/152699

PRELIMINARY RECITALS

Pursuant to a petition filed October 06, 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 November 27, 2013, at Janesville, Wisconsin. At the request of the parties, the record was held open for the county agency to submit a closing argument to DHA and petitioner by December 11, 2013, and until December 27, 2013 for petitioner's responsive closing argument to be sent to DHA and the county agency. Both parties timely submitted their written arguments to DHA which are received into the hearing record.

The issue for determination is whether the petitioner has failed to timely repay an MA overpayment from the period of August 1, 2012 through March 31, 2013 in the amount of \$3,611.20 to warrant the issuance of an Order to Compel Payment against the petitioner.

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: Mary Donahue, ES Supervisor
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 resided with his ex-wife, [REDACTED] (a/k/a Bare), in her household until December 12, 2013.
2. Petitioner and his wife divorced on or about August 12, 2013.
3. Petitioner was in ex-wife's ([REDACTED]'s) BadgerCare Plus household during the period of August 1, 2012 to December 12, 2012.
4. Petitioner resided in his ex-wife's BC household during the period of August 1, 2012 to December 12, 2012, when [REDACTED] reported to the county agency that Mr. [REDACTED] moved out of her home to his own residence.
5. The county agency sent two March 14, 2013 BC Overpayment Notices to the petitioner's ex-wife and petitioner's ex-wife stating that she received BC overpayments of \$3,611.20 and \$507.06 totaling \$4,118.26 during the period of August 1, 2012 through March, 31, 2013, due to her failure to report earned and unearned income from several sources causing the FS and BC overpayments. However, petitioner was no longer residing at his ex-wife's address and his ex-wife failed to forward those BC overpayment notices to the petitioner at his new address.
6. Neither petitioner's ex-wife nor petitioner requested a timely hearing before DHA regarding the BC or Overpayment notices.
7. The Department sent BC overpayment notices and repayment agreements to the petitioner on April 1, 2013, May 1, 2013, June 3, 2013 and July 1, 2013. The petitioner's ex-wife did not submit any payments or sign the repayment agreement. The petitioner did not submit any payments or sign the repayment agreement. However, petitioner was no longer residing at his ex-wife's address and his ex-wife failed to forward those BC overpayment or repayment notices to the petitioner at his new address.
8. The Department did send September 20, 2013 MA and FS overpayment notices to petitioner (Mr. [REDACTED]) at his correct address.
9. Department collection specialist Jennifer Bach sent an October 1, 2013 letter to petitioner's attorney indicating that the Department of Children and Families (DCF) was not a party to the divorce settlement agreement and is not bound by the divorce decree. Mr. [REDACTED]'s liability is joint and several; therefore, the debt is not split equally between the parties but rather both are liable for 100% of the debt. Mr. [REDACTED] has the right to pursue a small claim action against [REDACTED] Bare.
10. The Department's Public Assistance Collection Unit (PACU) sent October 4, 2013 notices to petitioner entitled *Notice of Administrative Action*; enclosed with the notice was an *Order to Compel Payment of Liability* and an *Affidavit of Collector*; all of this concerned the BadgerCare Overpayment in the amount of \$3,611.20.
11. The petitioner timely filed an October 15, 2013 appeal of the BC Order to Compel Payment.
12. In her December 10, 2013 closing argument, ES Supervisor Mary Donahue stated in pertinent part that: a) on December 12, 2012, petitioner's ex-wife reported that Mr. [REDACTED] moved out of her home to his own residence, and the county agency failed to timely act upon that report; b) the county agency stipulated that [REDACTED] should not be liable for the BC or FS overpayment of benefits after he left [REDACTED]'s home (January, 2013 through March, 2013); c) the county agency stipulated to remove petitioner as a liable party for the BC overpayment of \$422 during the period of January, 2013 through March, 2013; and d) the petitioner remains liable for the BC overpayment during the period of August, 2012 through December, 2012 during which time petitioner was in his ex-wife's BC and FS households.

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). As explained by the above Findings of Fact, the BC overpayment notices were sent to the petitioner, but not forwarded to petitioner at his new address by his ex-wife. See Finding of Fact #7. However, the Department did send to petitioner (Mr. ████████) at his correct address September 20, 2013 MA and FS overpayment notices. The Department also sent an October 1, 2013 letter to petitioner. Finding of Fact # 9. Furthermore, the Department then sent the October 4, 2013 Notice of Motion to Compel Payment to petitioner at his correct address. Finding of Fact #10 above.

During the hearing and in her December 10, 2013 closing argument, ES Supervisor Donahue basically stipulated that Mr. ████████ did not receive any of the CARES generated overpayment or dunning notices as they were sent to his now ex-wife's address. His ex-wife did not have any of those notices forwarded to petitioner at his new address. The first letter that Mr. ████████ received about this MA overpayment issue was dated September 20, 2013 from the Public Assistance Collection Unit. However, as explained above, the only issues that can be addressed by this ALJ are whether the petitioner repaid the MA overpayment, or whether petitioner entered into a repayment agreement with the Department. The hearing record indicates that the answer to both those questions is no. As a result, the Department correctly issued to the petitioner an October 4, 2013 Order to Compel Payment of the overpayment liability. The petitioner has timely appealed the order to compel, but according to the law the only issue that can be addressed is whether he paid off the overpayment, or whether he has entered into a repayment agreement and complied with it.

The petitioner could file a new appeal at DHA regarding the MA overpayment on the basis that he did not receive adequate and timely MA overpayment notices to have timely appealed the underlying MA overpayment of \$3,611.20. However, such appeal would not help the petitioner because Wis. Stat. § 49.497(1) clearly would support the Department's correctness to pursue the MA overpayment against petitioner and his ex-wife because: a) his ex-wife failed to timely report earned and unearned income to

the county agency; and b) because petitioner was in his ex-wife's MA household during the MA overpayment period he is also liable for the MA overpayment. The petitioner's only possible recourse would be in small claims court or Circuit Court with a legal action against his ex-wife. Accordingly, based upon the above, I must conclude that the petitioner has failed to timely repay an MA overpayment from the period of August 1, 2012 through March 31, 2013 in the amount of \$3,611.20 to correctly warrant the issuance of an Order to Compel Payment against the petitioner.

CONCLUSIONS OF LAW

The Department's Public Assistance Collection Unit correctly issued to the petitioner an Order to Compel Payment for an MA overpayment of \$3,611.20.

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 5th day of February, 2014

\sGary M. Wolkstein
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 February 5, 2014.

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