



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/153142

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a telephone hearing was held on December 02, 2013.

The issue for determination is whether the agency correctly determined an MA overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Beulah Garcia

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Wood County.
2. Petitioner reported her marriage to the respondent in 2010. Due to agency error, petitioner's husband was not added to her BadgerCare Plus – Core case.

3. In August of 2011, petitioner did not report her husband in the home, or his income. In July of 2012, another renewal was completed, and while there was a name change reported, no information was provided regarding her husband's income.
4. In July of 2012, petitioner updated her name at renewal; the respondent took no action on this change.
5. At renewal for 2013, petitioner asked respondent whether she needed to include her husband's income. This prompted a review of petitioner's file by the respondent; after review, the respondent determined that the original agency error converted to a client error when client did not report her husband's income on the August, 2011 renewal form.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Respondent concedes that the petitioner reported her marriage in 2010, and concedes that the failure to pursue this information led to agency error and an overpayment of MA benefits. Petitioner testified that she thought that her husband's income did not impact her eligibility due to the respondent's lack of follow-up on the issue. In testimony at hearing, the respondent conceded that this was a reasonable assumption on the part of the petitioner.

BC+ recipients are required to report any changes in income that could affect eligibility or premiums. Wis. Admin. Code, §DHS 104.02(6); BC+ Handbook, App. 27.3. Petitioner argues that she did so in 2010, and she did not think that she would have needed to repeat the reporting every year. In fact, she did inform the respondent in 2012 that her name change had apparently not been effectuated; the respondent changed the name, but took no further action at that time. Only after the petitioner contacted the respondent in 2013 to ask about reporting her husband's income, did the respondent address the issue. Had the petitioner not made that contact in 2013, the respondent concedes that this overpayment would likely be ongoing.

I disagree with the respondent's contention that the agency error converted to a petitioner error in 2011. Based upon the record before me, as well as the hearing testimony, I am unable to conclude that any of

the alleged overpayment was based upon client error. The acknowledged agency error in 2010 was the root cause of the entire overpayment at issue here. Thus the overpayment claims identified as Claim Nos. [REDACTED], [REDACTED], and [REDACTED] must be reversed.

CONCLUSIONS OF LAW

1. The respondent has not established petitioner's liability for overpayment Claim Nos. [REDACTED], [REDACTED], and [REDACTED].
2. Overpayment Claim Nos. [REDACTED], [REDACTED], and [REDACTED] were caused by agency error.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind overpayment Claim Nos. [REDACTED], [REDACTED], and [REDACTED]. All actions required by this Order shall be completed within 10 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, 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 24th day of January, 2014

\sPeter McCombs
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 24, 2014.

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