



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/153241

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 30, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Adams County Health and Human Services in regard to Medical Assistance, a hearing was held on December 09, 2013, at Friendship, Wisconsin. The record was held open for 10 days to allow for the submission of further documentation. Said documentation was timely received.

The issue for determination is whether the respondent has established an overpayment of Medical Assistance benefits to petitioner, as identified by claim nos. [REDACTED], [REDACTED], and [REDACTED], in the total amount of \$2,183.00.

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: Linda Gilman

Adams County Health and Human Services  
108 E North Street  
Friendship, WI 53934-9443

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Adams County.

2. Petitioner reported her marriage to the respondent in 2007. Despite the report, petitioner's husband was not added to her BadgerCare Plus case.
3. In BadgerCare Plus renewal summaries submitted by petitioner in 2010, 2011, and 2012, petitioner did not list her spouse under the "People in Your Home" session, did not change her marital status from "divorced," and signed her name using Wilson, her appellation prior to her marriage.
4. Respondent alleged an overpayment of Medical Assistance benefits to petitioner, as identified by claim nos. [REDACTED], [REDACTED], and [REDACTED], in the total amount of \$2,183.00.

### 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, § 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to recover benefits from the Petitioner, the agency is the moving party. The Department acknowledged the principle laid down in *Hanson* in Final Decision ATI-40/87198 where then-Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case.

In support of its case, the respondent has provided copies of case comments, the investigative report and the overpayment notice. See, Exhibits 2-1, 2-3, and 2-5. Testimony was provided corroborating the documents. To establish the overpayment, the respondent relies upon the investigation as well as the fact that the petitioner failed to provide correct information on her renewal documents. See, Exhibit 3. 1. Respondent points to BadgerCare Plus renewal summaries submitted by petitioner in 2010, 2011, and 2012, wherein petitioner did not list her spouse under the "People in Your Home" session, did not change her marital status from "divorced," and signed her name using Wilson, her appellation prior to her marriage. *Id.*

Petitioner has affirmatively asserted that she contacted her case worker to report her marriage in 2007. She further testified that she was told in 2007 that her husband's income did not matter, as the MA benefits were for her children, who were his step-children. The petitioner noted that she still sometimes uses the "Wilson" surname. Still, that does not refute or answer why the petitioner did not correct and/or update the information provided by her yearly renewals.

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 2007, when she reported her marriage. However, the petitioner's last three renewals continued to be done in the name "Wilson," and the petitioner has not seen fit to correct her marital status, which still states "divorced." The petitioner has failed to successfully rebut the respondent's prima facie case here.

This is a rather close case. Based upon the record before me, as well as the hearing testimony, I conclude that the alleged overpayment was based upon client error. While the respondent has not proven any fraud on the part of the petitioner, the recovery of an overpayment only requires an "error" on the part of the petitioner. The weight of the evidence in the record favors the respondent. Thus the respondent has established that it has correctly identified overpayment claim nos. [REDACTED], [REDACTED], and [REDACTED], in the total amount of \$2,183.00.

**CONCLUSIONS OF LAW**

1. The respondent has established petitioner's liability for overpayment Claim Nos. [REDACTED], [REDACTED], and [REDACTED].
2. The overpayments identified as Claim Nos. [REDACTED], [REDACTED], and [REDACTED] were caused by client error.

**THEREFORE, it is**

**ORDERED**

That the petitioner's appeal 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

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\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 27, 2014.

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