FH
[redacted]

# STATE OF WISCONSIN
## Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/154012

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 29, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sauk County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on January 21, 2014. The overpayment at issue here was previously the subject of a fair hearing; following a decision and remand of the overpayment in the previous case, the county agency redetermined the overpayment and issued new notices to petitioner. Petitioner timely appealed the redetermined overpayment.

The issue for determination is whether the respondent correctly established an overpayment of Medical Assistance (MA) to petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted], by [redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Julie Arendsee
Sauk County Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Sauk County.
2. Petitioner is a member of an MA household of four.
3. Respondent notified petitioner that it established an overpayment of MA benefits to petitioner in the amount of $962.00 from November, 2012, through June 2013.
4. Petitioner timely appealed from that notice on June 26, 2013.
5. Following remand, the respondent recalculated the overpayment based upon available wage records, and established an overpayment of MA benefits to petitioner in the amount of $873.00.
6. Petitioner timely appealed the recalculated overpayment amount.

## 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.

This matter has been appealed previously; in the earlier matter, the overpayment was remanded to the respondent to redetermine the overpayment based upon petitioner's actual household income. The redetermination resulted in a decrease in the amount of the overpayment, but petitioner alleges that there are still problems with the income calculations specific to the months of November, 2012 and February, 2013.

At hearing respondent explained that the November, 2012, household income calculation was missing a paystub for November 23, 2012. As such, that pay period was averaged. Petitioner conceded the oversight in not providing a check for that pay period.

The calculations for household income for February, 2013, were also questioned by petitioner. The respondent conceded an error in those calculations. As such, this matter will be remanded to the respondent to recalculate petitioner's household income for February, 2013, and determine to what extent, if any, the recalculated amount will affect the overpayment.

## CONCLUSIONS OF LAW

The respondent has not established that it properly calculated petitioner's household income for the month of February, 2013.

**THEREFORE, it is** **ORDERED**

That this matter (Claim No. [redacted]) shall be remanded to the respondent to (1) review and re-calculate petitioner's household income for the month of February, 2013; and (2) re-calculate the overpayment based upon petitioner's correct February, 2013, income. After the review and re-determination, respondent shall provide written notice to the petitioner, including new appeal rights. All actions required under this Order shall be completed within 14 days following issuance 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 14th day of February, 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 February 14, 2014.

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