



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/154486

PRELIMINARY RECITALS

Pursuant to a petition filed December 27, 2013, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to utilize a tax intercept to recover a Medical Assistance (MA) overpayment, a hearing was held on February 26, 2014, by telephone.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect an MA overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Beulah Garcia
Northern IM Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Iron County.
2. Petitioner was included in an MA household with his wife and stepchildren. He moved out of the home and divorce proceedings were started in June, 2012.
3. Petitioner's ex-wife did not report him out of the home until January, 2013.

4. On February 7, 2013, the agency notified petitioner's ex-wife that she was overpaid \$1,390.46 in MA for petitioner from July 1, 2012 through January 1, 2013 because he no longer was eligible after he moved out of her home, claim no. [REDACTED]. She appealed but the Division of Hearings and Appeals affirmed the claim in a decision dated July 8, 2013.
5. On March 4, 2013 the agency sent an overpayment notice for the same claim to petitioner. The notice was sent to his ex-wife's address and he did not receive it. The agency then sent three "dunning" notices to petitioner; all three were sent to petitioner's current address. He did not respond.
6. On December 13, 2013, the PACU sent petitioner a notice that it intended to intercept his state tax refund to recover the overpayment.

DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FoodShare, and MA payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Department is required to recover all overpayments of public assistance benefits. 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, and in this case it was caused by petitioner's ex-wife failing to report his absence from the home. Importantly for this case, the right of recovery is against any MA "recipient to whom or on whose behalf the incorrect payment was made." Wis. Stat., §49.497(1)(b).

It is unfortunate for petitioner that neither he nor his ex-wife informed the agency that he moved out in June, 2012. Because of the failure the MA program paid HMO capitation fees on petitioner's behalf, and thus there was an overpayment even though petitioner did not see a doctor in that time. The law mandates that both petitioner and his ex-wife are liable for the recovery of the overpayment. I thus must conclude that the PACU's action was correct.

CONCLUSIONS OF LAW

The PACU correctly sought to recover from petitioner an MA overpayment paid on his behalf because his move from his ex-wife's home, which deprived him of MA eligibility, was not reported to the MA agency.

THEREFORE, it is

ORDERED

That 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 3rd day of March, 2014

\sBrian C. Schneider
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 March 3, 2014.

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