



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/154571

PRELIMINARY RECITALS

Pursuant to a petition filed December 30, 2013, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance (MA), a telephonic hearing was held on February 18, 2014.

The issue for determination is whether any overissued MA is subject to recovery.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Pahoua Vang

Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.
2. From December 2012 through September 2013, petitioner had assets above \$2000.

3. On November 12, 2013, the agency issued a notice of decision to petitioner stating that she was overpaid MA benefits during the period of December 2012 through September 2013 in the amount of \$38,762.65 due to recipient error.
4. The agency had paid \$38,762.65 in monthly MA benefits for petitioner from December 2012 through September 2013. Exhibit 4.

DISCUSSION

The Department may recover any overpayment of medical assistance that occurs because 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 [BadgerCare].
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.

Wis. Stat. §49.497; see also *Medical Eligibility Handbook (MEH)*, §22.2.1.1, available online at <http://www.emhandbooks.wi.gov/meh-ebd/>.

The MA recovery statute clearly provides for recovery of MA when a recipient or representative fails to report income or assets which would affect eligibility. The failure does not have to be intentional. The agency did not suggest that it was making a fraud case here. Even an honest mistake of failing to report income, or failing to get her assets under the limit, is subject to the recovery rights for the agency.

Petitioner's representative testified that he was not attempting to do anything intentional, and that he simply forgot or failed to get her assets down. Unfortunately for petitioner, these facts do not change the outcome of the case. The law and policy are clear that this is recoverable. The documents provided by the agency for hearing support the amount of the overpayment for the time periods in question. Therefore, I must find that the county agency correctly seeks to recover these benefits.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

Petitioner was overissued MA that is subject to recovery.

THEREFORE, it is

ORDERED

The petition for review herein be 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 Milwaukee,
Wisconsin, this 7th day of March, 2014

\sKelly Cochrane
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 7, 2014.

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