



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MTI/154655

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 09, 2014, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Portage County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on March 18, 2014, at Stevens Point, Wisconsin. At the request of the parties, the record was held open until March 25, 2014 for the county representative to send documents and a written closing argument to DHA (and to petitioner), and then until April 1, 2014 for petitioner to submit any written response to DHA (and the county agency). Ms. Mayek timely submitted the agency's persuasive closing argument with documents to DHA and petitioner. However, petitioner failed to submit any response to DHA by April 1, 2014 or even by the date of this Decision.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect an MA overpayment of \$3,572.45.

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: Mandy Mayek, ES Supervisor  
Portage County Department of Human Services  
817 Whiting Avenue  
Stevens Point, WI 54481-5292

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County who was married to [REDACTED], and had one daughter, AS.
2. Petitioner's received BadgerCare (BC) benefits for a household of two during the period of January 1, 2010 to October 31, 2012.
3. Petitioner failed to timely report to the county agency during his reviews during the overpayment period that his daughter, AS, has resided with his ex-wife since January 1, 2010.
4. During his September 20, 2012 BC eligibility review, petitioner indicated to the county agency that his daughter no longer resided with him.
5. The county agency referred the case to an investigator to determine when petitioner's daughter had left his residence to live with her mother.
6. Petitioner included his daughter in his BC household during the MA overpayment period of January 1, 2010 to October 31, 2012. MA payments and capitation fees were incorrectly paid on behalf of petitioner's daughter during the MA overpayment period due to his daughter not residing in his household.
7. On February 8, 2013, the agency sent to the petitioner at his correct address a BadgerCare Overpayment notice which indicated that he was overpaid \$3,572.45 in BC for his BC household from January 1, 2010 to October, 2012, due to his failure to timely report the county agency that his daughter has not resided with him since January 1, 2010, but instead resided with her mother. Petitioner's daughter was thus ineligible for any MA benefits or payments during the entire overpayment period. The petitioner did not appeal that MA overpayment notice to the Division of Hearings and Appeals (DHA).
8. The county agency sent a March 4, 2013 MA overpayment notice and Repayment agreement to the petitioner at his correct address stating that he was overpaid \$3,572.45 in BC for his BC household from January 1, 2010 to October, 2012, due to his failure to timely report the county agency that his daughter has not resided with him since January 1, 2010.
9. The county agency sent Dunning Notices to the petitioner at his correct address on April 2, 2013, May 2, 2013, and June 4, 2013 informing petitioner of his MA overpayment debt.
10. None of the notices in Findings of Fact #7-#9 were returned to the county agency as undeliverable.
11. On December 13, 2013, the Public Assistance Collections Unit (PACU) sent to the petitioner a notice stating that it intended to intercept his state tax refund to recover the \$3,572.45 MA overpayment. Exhibit 1.
12. Petitioner filed with the Division of Hearings and Appeals (DHA a January 9, 2014 appeal of his December 13, 2013 MA tax intercept notice. That appeal was untimely to appeal the underlying February 8, 2013 MA overpayment notice to the petitioner.

**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 petitioner failed to timely appeal his February 8, 2013 BC overpayment notice that was sent to him at his correct address. As a result, the scope of this hearing is limited to exclude issues that could have been presented at a prior hearing regarding the BC overpayment issue. The petitioner did not establish any payment made towards the outstanding balance of the tax intercept.

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.**

(Emphasis added).

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 failure to timely report that his daughter no longer had resided with him since January 1, 2010, and thus all BC payments and capitation fees paid on her behalf were overpayments.

During the hearing, petitioner was argumentative, but unconvincing in his allegations that he did not receive his BC overpayment notice or any of the other four notices sent to him at his correct address. The petitioner did not establish any problem with his mail delivery. The petitioner was unable to establish any credible explanation for why he would not have received any of five notices sent to him at his correct address. Furthermore, the county representative testified that none of the overpayment notices sent to petitioner were returned as undeliverable. The petitioner's testimony was simply not credible. Petitioner did not dispute that he has not made any payment toward his outstanding BC overpayment.

Finally, petitioner failed to submit any written response to the agency's persuasive closing argument and documents. Accordingly, based upon the above, I must conclude that the Department correctly sought to intercept petitioner's tax refund to collect an MA overpayment of \$3,572.45.

### CONCLUSIONS OF LAW

The Department correctly sought to intercept petitioner's tax refund to collect an MA overpayment of \$3,572.45 pursuant to Wis. Stat., §49.497(1).

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 11th day of June, 2014

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 11, 2014.

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