



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAC/155412

PRELIMINARY RECITALS

Pursuant to a petition filed February 11, 2014, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Public Assistance Collection Unit (PACU) to compel payment of a Medical Assistance (MA) liability, a telephone hearing was held on March 06, 2014. The record was held open to permit the respondent to obtain further information; said information was promptly received.

The issue for determination is whether the PACU properly seeks to compel payment of a public assistance debt.

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: Tom Miller

La Crosse County Department of Human Services
300 N. [REDACTED]
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The respondent established an MA overpayment claim against the petitioner and NN, the mother of his minor children, based upon its finding that NN had failed to report that petitioner resided with her.
3. Respondent sent a Notice and Repayment Agreement for Medical Assistance/BadgerCare/BadgerCare Plus Overpayment to petitioner at [REDACTED] La Crosse, WI 54601-3228. This is the La Crosse County offices address; petitioner has never resided there.
4. Dunning notices were also mailed in April, May, and June of 2013, and addressed to petitioner at the [REDACTED] address in La Crosse.
5. On October 4, 2013, an Order to Compel Payment of Liability was issued to petitioner indicating that he was liable for an MA overpayment in the amount of \$17,758.68. The Order, along with a Notice and an Affidavit of Collector were to petitioner at the [REDACTED] address in La Crosse.
6. Post hearing the respondent indicated that the underlying MA overpayment liability of petitioner was decreased from \$17,758.68 to \$9,605.13, due to the removal of petitioner's liability for BCPA overpayments.

DISCUSSION

Following issuance of an MA/MAPP overpayment notice, Wisconsin law provides that a person who then fails to enter into or adhere to a repayment agreement may be subject to an order to compel payment of that liability:

(a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.

Wis. Stat. §49.497(1m)(a).

The above law indicates that if, after notice of incorrect payment (overpayment) is made, a recipient who is liable for an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, then the State of Wisconsin may bring an action to enforce the liability or may issue an order to compel payment of the liability. Wis. Stat. § 49.497(1m)(a) (2007-08). In this case the State of Wisconsin has issued an Order to Compel Payment of Liability.

The petitioner did not appeal the underlying MA overissuance. He claims that he was never informed of this, and the respondent did not present any MA overpayment notice that bears petitioner's correct address. The respondent submitted an Investigative Report that was prepared by the respondent's investigator with regard to allegations that petitioner was residing with his children and their mother. The report was dated January 16, 2013, which pre-dates the MA overpayment determination and all subsequent notices pertaining thereto. See, Exhibit 2. The Report provides the following information:

From about August 2009 to about September 2010, [petitioner and NN] lived at [REDACTED] [REDACTED] in La Crosse. ... From about September 2010 to about July 2012, [they] lived at [REDACTED], [REDACTED]. ... In about July 2012, [they] moved into the home at [REDACTED]. They continue living there today.

Despite having this information available, the respondent continued to, in effect, mail the petitioner's overpayment notices, dunning notices, and the Order to Compel Payment of Liability notice back to itself. The respondent was unable to provide any information as to why the La Crosse County office address was used for the petitioner, or why the address information in the Investigative Report was not used to update the respondent's records.

In any event, because the petitioner did not receive the MA overpayment notice or any of the three dunning notices, the agency did not properly comply with the first prerequisite to issuing an Order to Compel Payment of Liability to the petitioner, i.e., the respondent must first provide notice of incorrect payment. See, Wis. Stat. §49.497(1m)(a).

CONCLUSIONS OF LAW

The respondent did not properly issue the Order to Compel Payment of Liability to the petitioner.

THEREFORE, it is

ORDERED

That the agency shall take all administrative steps necessary to rescind the Order to Compel Payment of Liability issued to the Petitioner on October 4, 2013. This action shall be completed within 10 days of the date of this decision.

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 18th day of April, 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 April 18, 2014.

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