



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MTI/155506

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2014, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Marinette County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on April 07, 2014, at Marinette, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

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

By: Sandra Waugus, ESS
Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Marinette County who was married to [Redacted] (Williams) and had one child.

2. Petitioner's wife had a BadgerCare (BC) household of three which included herself, petitioner, and their one child during the period of March 1, 2012 to May 31, 2012.
3. ██████████ failed to timely report to the county agency during her review her employment and income.
4. The county agency discovered her unreported employment and income during April, 2012.
5. Petitioner was included in the BC household with his former wife, ██████████ during the MA overpayment period of March 1, 2012 to May 31, 2012. MA payments and capitation fees were paid on behalf of petitioner, his ex-wife, and their child during the MA overpayment period.
6. The petitioner did not move out of his ex-wife's household until during July, 2013.
7. The petitioner and his wife divorced on or about October 4, 2013.
8. On August 17, 2013, the agency notified petitioner's ex-wife that she was overpaid \$2,409.93 in BC for her BC household from March 1, 2012 to May 31, 2012, due to her failure to timely report to the county agency her employment and income from that employment. Neither petitioner nor his ex-wife timely appealed the MA overpayment notice to the Division of Hearings and Appeals (DHA).
9. On September 5, 2012, the agency sent an MA overpayment notice to the petitioner for the same claim as had been sent to his ex-wife on August 17, 2012. The agency then sent three "dunning" notices to petitioner at his address.
10. On October 4, 2013, the Department sent an Order to Compel Payment to the petitioner and on December 10, 2013, the Department filed a lien in Circuit Court against the petitioner.
11. On January 17, 2014, the Public Assistance Collections Unit (PACU) sent petitioner a notice to the petitioner that it intended to intercept his state tax refund to recover the MA overpayment. Exhibit 1.
12. Petitioner filed with the Division of Hearings and Appeals (DHA) a February 13, 2014 appeal of his January 17, 2014 MA tax intercept notice. That appeal was untimely to appeal the underlying September 5, 2012 BC 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 September 5, 2012 BC overpayment notice that was sent to him or the August 17, 2012 BC overpayment notice sent to his ex-wife. 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 ex-wife failing to report her employment and income from that employment to the county agency. 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 his ex-wife did not timely notify the county agency of her employment and income which resulted in adult BC income ineligibility for part of the BC overpayment period and premiums due for the child and the adults in the household. Because of his ex-wife's failure to timely report her income to the county agency, BC payments and capitation fees were made for petitioner and his ex-wife and unpaid BC premiums resulted in the \$2,409.93 BC overpayment. The law under joint and several liability mandates that both petitioner and his ex-wife are liable for the recovery of the BC overpayment. BC+ Handbook, Appendix 28.4.4. Accordingly, based upon the above, I must conclude that the PACU's action to pursue a BC tax intercept against the petitioner was correct.

### CONCLUSIONS OF LAW

The Department correctly sought through a BC tax intercept to recover from petitioner the BC overpayment paid during the period of March 1, 2012 to May 31, 2012, because he resided in the BC household with his ex-wife during that MA overpayment period, and thus was jointly and severally liable for her failure to timely report her employment and income to the county agency.

**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 10th day of June, 2014

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\sGary ■ Wolkstein  
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 June 10, 2014.

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