



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/155629

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 20, 2014, under Wis. Stat., §49.45(5), to review a decision by the Dane County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on April 9, 2014, by telephone.

The issue for determination is whether petitioner was overpaid MA due to the failure to report an increase in income.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Luisa McKy  
Dane County Dept. of Human Services  
1819 Aberg Avenue  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. In 2013 petitioner received MA under the BadgerCare Plus (BC+) Core Plan. On February 19, 2013, the county notified petitioner that he was eligible for the Plan based upon monthly income of \$1,376. The notice told petitioner that he had to report an increase in income if income rose above \$1,436 per month.

3. Petitioner is employed by the [REDACTED] [REDACTED] on a seasonal basis, doing landscaping in the summer and snow plowing in the winter. When his review was done in February, 2013, his most recent two months' income averaged slightly over \$1,000 per month.
4. In February, 2013, petitioner's income spiked because of heavy snowfall. His February, 2013 income was \$2,084. His March income was \$1,590. However, in April, 2013 his monthly income was just \$98.
5. Petitioner did not report any income changes. In May, 2013, the county received a state wage match showing the first quarter income, and it requested additional income verification. Based upon the income verification and petitioner returning to full time landscaping work for the [REDACTED], he was found eligible for the Core Plan effective July 1 with a monthly premium.
6. In January, 2014, the county determined that petitioner was overpaid \$620 in MA in May and June, 2013, on the basis that he failed to report his increase in income in February, 2013, and had he done so he would have been ineligible for MA in May and June. Petitioner was notified about the overpayment by a notice dated January 27, 2014, claim no. [REDACTED].

### DISCUSSION

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. Overpayments caused by agency error are not recoverable.

In 2013 petitioner was required to report an increase in income above 150% of the federal poverty level. Clearly his income in both February and March, 2013 was above that amount, but the problem is what the agency would have done with that information had petitioner reported it. Petitioner's income in April, 2013 dropped precipitously, and had he reported the increase in March, it is presumed that he would have reported the lay-off in April. Had he done that, his May Core Plan MA would have changed again to be based on the April, 2013 lay-off, meaning he would have been eligible with no premium.

Another way to look at the case is to average the income. See Handbook, App. 16.6, which discusses averaging income that fluctuates. Petitioner's income in the first four months of 2013 totaled \$4,281.99, an average of \$1,070.50. Even if January is removed, the average income for February through April was

\$1,257.45. Both amounts are lower than the \$1,376 that the county budgeted in its February 19 notice, so using the fluctuating income policy petitioner's income did not rise to the level for which reporting was required.

Petitioner's case is difficult because his income fluctuates tremendously. However, even if petitioner had reported the increased income from February, 2013, it is almost a certainty that the decreased April income would have resulted in no change to his Core Plan eligibility in May and June, 2013. Any changes would have occurred in July, 2013 after petitioner went back to landscaping full time in May, and that change actually did occur. I conclude that petitioner was not overpaid MA as alleged.

### **CONCLUSIONS OF LAW**

Although petitioner failed to report an increase in income in February, 2013, he was not overpaid MA in May and June, 2013 because his income dropped to almost nothing in April, 2013; that drop would have triggered eligibility for petitioner in May even with the February increase.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to rescind overpayment claim no. [REDACTED] against petitioner and to cease recovery of it. The county shall do so within 10 days 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 14th day of April, 2014

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\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 April 14, 2014.

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