



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/155633

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 18, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Taylor County Department of Human Services in regard to Medical Assistance, a hearing was held on March 20, 2014, at Medford, Wisconsin.

The issue for determination is whether the petitioner is responsible for repaying an overpayment of medical assistance caused by the failure of his child's mother to report that the three of them had moved to Minnesota.

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: Beulah Garcia

Taylor County Department of Human Services  
540 E. College Street  
Medford, WI 54451-2027

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Minnesota.
2. The petitioner lived with his girlfriend and their child in Minnesota from October 2009 through November 2012.

3. The petitioner's household received \$11,540.58 in Wisconsin BadgerCare Plus medical assistance benefits from November 1, 2009, through November 30, 2011. The program aid for care he received during this period.
4. Neither the petitioner nor his girlfriend reported to the county agency that they had moved to Minnesota.

### 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(1).

“The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made.” Wis. Stat. § 49.497(1)(b).

A person must reside in Wisconsin to be eligible for BadgerCare Plus. *BadgerCare Plus Handbook*, § 3.1. Residence is based upon “physical presence” and “the person’s intent to maintain Wisconsin residence indefinitely.” Wis. Admin. Code § DHS 103.03(3)(b). “Physical presence” means “living in Wisconsin.” Wis. Admin. Code § DHS 103.03(3)(a)3. “Intent to reside” means that a person “intends that Wisconsin is the person's place of residence and that the person intends to maintain the residence indefinitely.” Wis. Admin. Code § DHS 103.03(3)(a)2.

The petitioner lived with his girlfriend and their child in Wisconsin before moving to Minnesota in October 2009. While in Wisconsin they began receiving BadgerCare Plus medical assistance benefits. They continued receiving those benefits after moving to Minnesota because the petitioner’s girlfriend did not report the move. From November 1, 2009 through November 30, 2011, when the benefits ended, the program paid \$11,540.58 on their behalf. The county agency now seeks to recover this amount.

The petitioner contends that he was unaware that his former girlfriend was still receiving medical assistance benefits through Wisconsin rather than Minnesota. His credibility is supported by the fact that the investigation began when he reported the alleged offense to the Wisconsin agency after he said he became aware of it. He also provided evidence of his former girlfriend’s dishonesty by submitting a number of checks in which she forged his name, costing him approximately \$20,000. But he did receive medical care while living in Minnesota. One would think that he was asked who his insurer was and that he would have received coverage only if he correctly answered that it was BadgerCare Plus or Wisconsin Medicaid. Regardless, because he was a BadgerCare Plus recipient throughout the overpayment period whether he knew it or not, Wis. Stat. § 49.497(1)(b), allows the Department to recover the overpayment from him. As an administrative law judge, I have no equitable powers that would allow me to consider the fairness of the situation; rather, I must follow the law as it is written and uphold the agency’s overpayment finding.

**CONCLUSIONS OF LAW**

The petitioner is responsible for an overpayment of BadgerCare Plus that occurred because he was a member of a household that received more benefits from the program than it was entitled to as a result of his girlfriend's failure to report that they had moved to Minnesota.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is 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 28th day of March, 2014. 2014

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\sMichael D. O'Brien  
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 28, 2014.

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