



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

MOP/156542

PRELIMINARY RECITALS

Pursuant to a petition filed April 03, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on May 08, 2014. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: FOP-156540.

The issue for determination is whether it was correct to establish the following 3 Claims against petitioner for overpayments of MA for the time period September 1, 2010 to October 31, 2012 in the total amount of \$2,850.41:

- (I) Claim Number [redacted]; September 1, 2010 to June 30, 2011; \$1,089.63;
(II) Claim Number [redacted]; August 1, 2011 to July 31, 2012; \$1,264.62; and,
(III) Claim Number [redacted]; August 1, 2012 to October 31, 2012; \$496.16.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Paralegal
Legal Action of Wisconsin
201 West Walnut, Suite 203
Green Bay, WI 54303-5711

Respondent:

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

By: Diane Van Asten, Fraud Investigator Aid
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

OTHER PERSONS PRESENT:

██████████, petitioner's younger sister
██████████, petitioner's son (18 years old)

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a resident of Brown County, Wisconsin.
2. The County established the following 3 Claims against petitioner for overpayments of MA for the time period September 1, 2010 to October 31, 2012 in the total amount of \$2,850.41:
 - (I) Claim Number ██████████; September 1, 2010 to June 30, 2011; \$1,089.63;
 - (II) Claim Number ██████████; August 1, 2011 to July 31, 2012; \$1,264.62; and,
 - (III) Claim Number ██████████; August 1, 2012 to October 31, 2012; \$496.16.
3. During the time period of the MA overpayments listed in *Finding of Fact #2*, above, petitioner's 2 youngest children (son FFC III born in 2001; and, daughter TMLC born in 2008) were counted as living with petitioner at least 40% of the time.
4. During the time period of the MA overpayments listed in *Finding of Fact #2*, above, petitioner and her 2 youngest children did not live together and petitioner failed to report this.

DISCUSSION

An overpayment of MA benefits may be recovered only in the following 3 circumstances:

- A. A misstatement or omission of fact by a person supplying information in an application for benefits;
- B. The failure of an MA or BadgerCare 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; or,
- C. The failure of an MA or BadgerCare 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)(a) (2011-12); Wis. Admin. Code § DHS 108.03(3)(b) (May 2010); See also, *Badger Care + Eligibility Handbook* ["BC+EH"] 28.1.; *Medicaid Eligibility Handbook* ["MEH"] 22.2.1; BEM/DWS Operations Memo, No: 05-39, Date: 09/29/2005; and, BEM/DWS Operations Memo, No: 06-10, Date: 02/09/2006.

The overpayments in this matter arose from the fact that petitioner's 2 youngest children were counted as living with petitioner at least 40% of the time when they did not live with her. With certain exceptions not applicable here, during the time period of the overpayments in this matter in order to be eligible for MA an adult must be a parent or caretaker relative of a child who is living in the home with the parent or caretaker relative. Wis. Stat. § 49.471(4)a. (2011-12); BC+EH 2.1. There are special rules that apply when the parents of a child do not live together. BC+EH 2.2.1.2. Under these special rules it is possible that both parents are eligible for BC+ if there is "reasonably equivalent placement" of a child they have in common. BC+EH 2.2.1.2. The special rules are found in section 2.2.1.2 of the *Badger Care + Eligibility Handbook* and are as follows:

“2.2.1.2 Joint Placement

When the natural or adoptive parents of a child do not live together, and have joint placement arrangements for the child (through a mutually agreed upon arrangement or court order), only one parent can be determined eligible at a time unless there is reasonably equivalent placement. Reasonably equivalent placement means that the child is residing with each parent at least 40% of the time during a month.

If the child is not residing with both parents at least 40% of the time, only the parent with the greater percentage of the placement time may apply on behalf of the child and/or for him or herself as the caretaker relative of that child.”

BC+EH 2.2.1.2.

This matter must be decided by a preponderance of the credible evidence in the record of this matter. Wis. Admin. Code §§ HA 3.09(1) & (4) (February 2014).

The only substantial evidence in the record of this matter to show that petitioner's 2 youngest children lived with her at least 40% of the time during the time period of the overpayments is petitioner's own statements. Those statements are not credible. Petitioner testified that her 2 youngest children lived with her for most of the time during the time period of the overpayments (except for when she was working in Wyoming and South Dakota). However, in a written statement dated October 4, 2012 petitioner states that the children were with her ½ the time with their father ½ the time.¹ These 2 statements are not consistent. Additionally, in a written statement dated September 28, 2012 the children's father states that the children lived with him full-time (except for 1 or 2 days at a time a couple of times per month). Third, petitioner admits that her 2 youngest children did not live with her during the time period January 2012 to May 2012 while she was working a Wyoming and South Dakota.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to establish the following 3 Claims against petitioner for overpayments of MA for the time period September 1, 2010 to October 31, 2012 in the total amount of \$2,850.41:

- (I) Claim Number [REDACTED]; September 1, 2010 to June 30, 2011; \$1,089.63;
- (II) Claim Number [REDACTED]; August 1, 2011 to July 31, 2012; \$1,264.62; and,
- (III) Claim Number [REDACTED]; August 1, 2012 to October 31, 2012; \$496.16.

¹ It is noted that petitioner's October 4, 2012 written statement is not hearsay. See, Wis. Stat. § 908.(4)(b)1. (2011-12).

NOW, THEREFORE, it is

ORDERED

That 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 29th day of May, 2014

\sSean P. Maloney
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 May 29, 2014.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney [REDACTED]