



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

MOP/157593

PRELIMINARY RECITALS

Pursuant to a petition filed May 12, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on July 7, 2014. At petitioner's request a Hearing scheduled for June 10, 2014 was rescheduled. 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-157592.

The issue for determination is it was correct to establish the following 5 Claims against petitioner for overpayments of MA during the time period October 1, 2010 to March 31, 2014 in the total amount of \$30,028.70:

- (a) Claim Number [redacted]; \$2,962.68;
(b) Claim Number [redacted]; \$2,080.48;
(c) Claim Number [redacted]; \$11,600.57;
(d) Claim Number [redacted]; \$12,438.06; and,
(e) Claim Number [redacted]; \$946.91.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Rhonda Reinke, ESS
Leslie Vosters, Fair Hearing Coordinator
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

OTHER PERSONS PRESENT:

Investigator, O'Brien & Associates
Supervisor, O'Brien & Associates
petitioner's boyfriend

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Winnebago County, Wisconsin.
2. Petitioner has a daughter ["KO"] who was born in March 1995.
3. Petitioner received MA during at least the time period October 2010 to March 2014.
4. During the time period October 2010 to March 2014 petitioner lived in Neenah, Wisconsin and reported that KO lived with her in Neenah.
5. During the time period October 2010 to March 2014 KO did not live with petitioner in Neenah (although she visited petitioner on weekends); during that time period KO lived with her grandfather in Racine, Wisconsin.
6. The County established the following 5 Claims against petitioner for overpayments of MA during the time period October 1, 2010 to March 31, 2014 in the total amount of \$30,028.70:
 - (a) Claim Number ; \$2,962.68;
 - (b) Claim Number ; \$2,080.48;
 - (c) Claim Number ; \$11,600.57;
 - (d) Claim Number ; \$12,438.06; and,
 - (e) Claim Number ; \$946.91.

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) (December 2013); 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.

With certain exceptions not applicable here, 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.

The County presented convincing and credible evidence that KO did not live with petitioner in Neenah during the time period in question (although she visited petitioner on weekends) and that, instead, she lived with her grandfather in Racine, Wisconsin. This evidence included statements made by petitioner during an investigation in April 2014, statements made by petitioner’s neighbors (who share the same duplex with petitioner) during an investigation in April 2014, statements made by KO’s grandfather during an investigation in April 2014, a written statement from KO’s grandfather dated April 16, 2014, a statement made by KO on April 8, 2014 as recorded in computer *Case Comments*, the fact that KO is registered to vote in Racine, Wisconsin, and the fact, undisputed, that petitioner attends school, in Racine, Wisconsin.

Petitioner testified that she was the “caretaker” of KO, that her neighbors are never at home and cannot say who is living with her, that the investigator only went in the front room of her house, and that she would visit KO in Racine. Petitioner’s boyfriend testified that they are having a feud with the neighbors that the investigator spoke with. None of this testimony is convincing and not all of it is credible. The preponderance of the credible evidence in the record of this matter is that KO did not live with petitioner in Neenah during the time period in question (although she visited petitioner on weekends) and that, instead, she lived with her grandfather in Racine, Wisconsin.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to establish the following 5 Claims against petitioner for overpayments of MA during the time period October 1, 2010 to March 31, 2014 in the total amount of \$30,028.70:

- (a) Claim Number [REDACTED]; \$2,962.68;
- (b) Claim Number [REDACTED]; \$2,080.48;
- (c) Claim Number [REDACTED]; \$11,600.57;
- (d) Claim Number [REDACTED]; \$12,438.06; and,
- (e) Claim Number [REDACTED]; \$946.91.

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 4th day of August, 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 August 4, 2014.

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