



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/157867

**PRELIMINARY RECITALS**

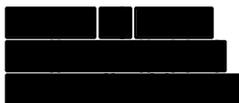
Pursuant to a petition filed May 23, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit (PACU) in regard to Medical Assistance (MA) – related benefits, a hearing was held on July 10, 2014, by telephone.

The issue for determination is whether the petitioner was overpaid in MA-related benefits from February 2013 through February 2014.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Diane Peterson, PARIS agent  
Public Assistance Collection Unit  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is currently a resident of Nebraska.
2. The petitioner received FS as a household of one person from at least January 2013, through February, 2014.

3. On May 15 and 16, 2014, a *MA/BadgerCare/BC Plus Overpayment Notice(s)* and supporting documents were sent to the petitioner, advising that he had been overpaid \$1,424.88 in MA-related benefits for the 2/1/13 – 2/28/14 period. The overpayment amount is comprised of \$61.18 capitation fees paid in 2013 (excluding January) plus 13 months' payment of QMB Medicare Premium Assistance amounts at \$104.90 monthly (\$1,363.70). Exhibit 2. The overpayment was due to client error.
4. The petitioner lived at an address on [REDACTED], Milwaukee, from December 2011 through November 11, 2012. From December 2012 to May 2013, he resided with his daughter-in-law and others at [REDACTED]. His wife, [REDACTED], may have resided at that address also.
5. The petitioner's bank card records reflect rental of a U-Haul truck on approximately May 23, 2013. The petitioner signed a lease (6/1/2013 – 5/31/2014) for a residence in [REDACTED], Nebraska on May 21, 2013. The petitioner's mother is in failing health and resides in [REDACTED].
6. The petitioner did not report his move to Nebraska to the Department during the above overpayment period. He used his Wisconsin FS card in a Wisconsin versus Nebraska ratio as follows:
 

December 2012	Wis. 100%/Neb 0%
January 2013	Wis. 0% /Neb 100%
February 2013	Wis. 0% / Neb 100%
March 2013	Wis. 0% /Neb 100%
April 2013	Wis. 91%/ Neb 9%
May 2013	Wis. 17%/Neb 83%
June 2013	Wis. 50%/Neb 50%
July 2013	Wis. 0%/ Neb 100%
7. The overwhelming majority of the petitioner's bank card usage is at banks/businesses in Milwaukee from January through April 2013. The transactions from May and June 2013 are primarily in Nebraska; the petitioner does not contest that he was primarily in Nebraska in May, and that he moved in by June 2013.
8. The petitioner resided in Milwaukee Wisconsin from February through May 2013.

## DISCUSSION

### I. AUTHORITY

DHS is legally required to seek recovery of incorrect MA payments when a recipient engages in a misstatement or omission of fact to the MA program, which in turn gives rise to an MA overpayment:

#### **49.497 Recovery of incorrect medical assistance pay-**

**ments. (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 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.

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*** for the recipient's cost-sharing requirements.

(b) 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. The extent of recovery is limited to the amount of the benefits incorrectly granted ...

*(emphasis added)*

Wis. Stat. §49.497(1). See also, *Medicaid Eligibility Handbook*, 22.2.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

In this case, Wisconsin MA-related payments were clearly, incorrectly made on the petitioner's behalf if he was not living in Wisconsin.

The remaining issue in this case is whether the petitioner's overpayment resulted from "... failure of a Medical Assistance ... recipient ... to report any change that in the recipient's ... eligibility characteristics that would have affected the recipient's eligibility for benefits." An income or residence change is to be reported within 10 days. *MEH*, §12.1. I conclude that the petitioner did not timely report the residence change in 2013.

## II. THE PETITIONER WAS OVERPAID FS FOR THE 6/1/13 – 2/28/14 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's income is in dispute. Rather, the petitioner explained that he did not move to Nebraska until May 2013, so the overpayment should only be for June 2013 onward.

The Department pointed to the petitioner's exclusive or near exclusive use of his FS card in Nebraska in the months of January, February, March, May, June and July 2013. Normally, this FS usage pattern, the fact that the petitioner was not tethered to a job in Wisconsin, and the fact that he was not listed on any lease in Wisconsin for January through May, would be enough for me to conclude that he had moved to Nebraska in January, and that he was overpaid from February 2013 through February 2014.

However, the petitioner testified that his mother became ill in Nebraska, and that he traveled back forth between the two states over several months before deciding that he needed to move to Nebraska to be with her. This could have happened. He introduced evidence of rental of a U-Haul truck in May. It is unlikely that he would have rented this truck in May if he had moved his large possessions earlier. Further, the petitioner's bank card transactions occurred overwhelmingly in Milwaukee from January through April 2013. The bank card receives the monthly deposit of the petitioner's only known income source, Social Security. The petitioner credibly testified that he does not allow anyone else to use the bank card, as it is access to his only known income source. Finally, some of the months with "Nebraska-heavy" usage show usage on just a few dates, which could be consistent with visiting (*e.g.*, in February, all transactions occurred on February 21 and 23). All of this evidence caused me to conclude that the petitioner has produced evidence that at least equals that provided by the Department.

One curiosity that the Department pointed out is that there are some dates on which the petitioner used his bank card in Milwaukee, and that his FS card was also used in Nebraska : April 14 and several dates in May 2013. The petitioner professed to not know how that could have happened. I am skeptical of his confusion; my suspicion is that he allowed someone else to use his FS card. However, that does not mean that he was overpaid on a "living out of state" theory.

In the end, this case comes down to an evidentiary tie. Because the Department has the burden of proof by a preponderance of the credible evidence, I conclude that the petitioner was only overpaid MA-related benefits for June 2013 through February 2014, on the “living out of state” theory. The overpayment will be reduced for the four disputed months.

### CONCLUSIONS OF LAW

1. The petitioner was overpaid MA-related benefits from June 1, 2013 through February 28, 2014, due to client error.
2. The Department is correctly pursuing recovery of the June 2013 through February 2014 overpayment, pursuant to federal law.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the Department with instructions to reduce the petitioner’s overpayment liability downward in accord with the Conclusions of Law above. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 this action occurred. 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 17th day of July, 2014

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\sNancy J. Gagnon  
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 July 17, 2014.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability