



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/158995

PRELIMINARY RECITALS

Pursuant to a petition filed July 14, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a hearing was held on August 13, 2014, at Janesville, Wisconsin.

The issue for determination is whether petitioner was overpaid MA because he did not have sufficient placement of his son.

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: Mary Donahue

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner applied for BadgerCare Plus (BC+) MA in May, 2013, for himself; petitioner reported joint custody of his son.
3. The respondent's Electronic Case Comments indicate that the mother of petitioner's son informed the respondent in October, 2013, that she had physical placement of their son 60% of the time.

4. In October, 2013 and in May of 2014, petitioner provided the respondent with Reasonably Equivalent Placement Statements, indicating that he had physical placement of his son approximately 40% of the time.
5. On or about July 9, 2014, the county sent petitioner a notice informing him that he was overpaid a total of \$3863.17 in MA from May, 2013, through March, 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.

To be eligible for BC+, a person must be under age 19, a custodial parent living with a child, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. Under BC+ policy, only one parent can receive BC+ as a caretaker if the parents are separated and have joint placement. BC+ Handbook, App. 2.2.1.2. If one of the parents has the child more than 60% of the time, that parent is considered the primary parent. If the parents have the child between 40-60% of the time, the Handbook provides a procedure to determine which parent will be considered the BC+ parent.

Generally the procedure to determine which parent is considered the BC+ parent only arises if both parents apply for the program. That is because the Handbook, App. 2.2.1.2, reads as follows:

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.

If only one parent of a child is applying for BC+ and he or she is stating that they have placement of the child for at least 40% of the time, accept the declaration unless it is questionable.

The respondent's case comments confirm that petitioner applied for MA for himself only in May, 2013.

The respondent conceded in testimony at hearing that the overpayment here may have been agency error. As overpayments that arise from agency error are not recoverable, I must remand this matter to the respondent to rescind the overpayment.

CONCLUSIONS OF LAW

The respondent has conceded that the overpayment identified as claim no. [REDACTED] arose as a result of agency error; as such, said overpayment is not subject to recovery.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to rescind overpayment claim no. [REDACTED] against petitioner and to cease recovery of it. The agency shall take this action 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 4th day of September, 2014.

\sPeter McCombs
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 September 4, 2014.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability