



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/159081

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 16, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance (MA), a telephonic hearing was held on September 10, 2014.

The issue for determination is whether the agency met its burden of proof to establish an overpayment of MA benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Tony Gehring

Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Washington County.

2. The petitioner's household was in the MA BadgerCare Plus (BCP) program from at least July 1, 2012 through April 30, 2013. For BCP purposes, the household was considered an assistance group size of 4 persons.
3. From July 2012 – April 2013, petitioner's household income was determined to be over the 200% Federal Poverty Level (FPL). See Exhibit 2.
4. On June 20, 2014 the agency issued three notices of MA overpayments to the petitioner advising her that (1) she had an overpayment of \$393.53 for the period of 9/1/12 – 1/31/13 due to premium due for one child; (2) she had an overpayment of \$153.14 for January 2013 due to the capitation rate paid for petitioner's MA; and (3) she had an overpayment of \$82 for April 2013 due to premium due for one child. Exhibit 1.

### DISCUSSION

The Department may recover any overpayment of medical assistance (MA) 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; see also *BadgerCare + Eligibility Handbook*, §28.2, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The MA recovery statute clearly provides for recovery of MA when a recipient fails to report income or assets which would affect eligibility. The failure does not have to be intentional. The agency did not suggest that it was making a fraud case here. Even an honest mistake of failing to report income is subject to the recovery rights for the agency.

Petitioner appeared at hearing and did not dispute the income or the calculations made for the overpayment. Her dispute was that she believed she had tried to contact the agency 6-7 times to cancel the MA. She testified that she called the agency in September 2012 after her husband got a new job, and then called thereafter every time she received a notice of decision from the agency and/or every time she had taken her newborn to the doctor and requested that her MA be cancelled. She also testified that she also attempted to cancel the MA via the internet, but that the website was never working.

The preponderance of the evidence before me does not support petitioner's version of events. First, the agency presented Case Comments to show that the petitioner had no contact with the agency between July 2012 and June 2013. Exhibit 5. The agency's representative at hearing testified to the agency's protocol in entering information into Case Comments whenever a client calls about her case. While a one-time error might be believable, 6-7 times is not, especially when there is no corroborating evidence to support that finding. Moreover, petitioner's reporting requirement was triggered in July 2012 when her household income went over the reporting requirement. Thus, she should have reported to the agency in *August* that her income was over the reporting requirement. Finally, several notices of decision were issued to the petitioner at her address of record during the overpayment period explaining the MA benefits for the household. See Exhibit 4. Thus, she was on notice that her MA was continuing even if she had called 7

times to cancel it. She certainly could have gone “banging on their doors” if the agency had not cancelled the MA with her phone call/internet attempts.

The evidence provided by the agency for hearing supports the amount of the overpayment for the time periods in question. The petitioner has not credibly rebutted that evidence. Therefore, I must find that the county agency correctly seeks to recover these benefits.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The agency met its burden of proof to establish an overpayment of MA benefits in the amount of \$393.53 for the period of 9/1/12 – 1/31/13, \$153.14 for January 2013 and \$82 for April 2013.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 20th day of October, 2014

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\sKelly Cochrane  
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 October 20, 2014.

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