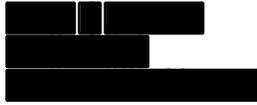




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

MOP/159511

PRELIMINARY RECITALS

Pursuant to a petition filed August 1, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services ["County"] in regard to Medical Assistance benefits ["MA"], a Hearing was held via telephone on September 9, 2014. The Hearing for this matter was held at the same time as the Hearing for the following 2 closely related matters concerning the same petitioner: FOP-159508; and, CCO-159513.

The issue for determination is whether the following 7 Claims may be established against petitioner for overpayments of MA in the total amount of \$5,602.59 covering the time period October 1, 2011 to March 31, 2014:

- (I) Claim # [redacted]; October 1, 2011 to September 30, 2012; \$1,824.00;
(II) Claim # [redacted]; January 1, 2013 to July 31, 2013; \$274.00;
(III) Claim # [redacted]; October 1, 2012 to July 31, 2013; \$2,043.65;
(IV) Claim # [redacted]; October 1, 2013 to March 31, 2014; \$408.00;
(V) Claim # [redacted]; October 1, 2013 to January 31, 2014; \$370.94;
(VI) Claim # [redacted]; January 1, 2013 to July 31, 2013; \$274.00; and,
(VII) Claim # [redacted]; October 1, 2013 to March 31, 2014; \$408.00.

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: Thomas Miller, ESS Supervisor

La Crosse County Department of Human Services

300 N. 4th Street

PO Box 4002

La Crosse, WI 54601

OTHER PERSONS PRESENT:

- ██████████, petitioner's mother
- ██████████, Investigator
- ██████████, Investigator
- ██████████, ESS

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ██████████) is a resident of La Crosse County, Wisconsin.
2. The County established the following 7 Claims against petitioner for overpayments of MA in the total amount of \$5,602.59 covering the time period October 1, 2011 to March 31, 2014:
  - (I) Claim # ██████████; October 1, 2011 to September 30, 2012; \$1,824.00;
  - (II) Claim # ██████████; January 1, 2013 to July 31, 2013; \$274.00;
  - (III) Claim # ██████████; October 1, 2012 to July 31, 2013; \$2,043.65;
  - (IV) Claim # ██████████; October 1, 2013 to March 31, 2014; \$408.00;
  - (V) Claim # ██████████; October 1, 2013 to January 31, 2014; \$370.94;
  - (VI) Claim # ██████████; January 1, 2013 to July 31, 2013; \$274.00; and,
  - (VII) Claim # ██████████; October 1, 2013 to March 31, 2014; \$408.00.
2. Petitioner is the mother of minor children AC (4 years old) and BV (8 years old); the father of AC is adult male DC.
4. Petitioner, AC, BV, and DC all lived together during the time periods relevant to the MA overpayments listed in *Findings of Fact #2*, above; petitioner did not report this to the County.
5. DC had income during the time periods relevant to the MA overpayments listed in *Findings of Fact #2*, above; this put petitioner over income for MA during those time periods.

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.

The County argues that petitioner was over the MA income limit during the time periods in question because MA lived with her (and the children) and had income that put them over the limit.<sup>1</sup> Petitioner denies that she and DC lived together during the time periods in question.

This matter must be decided based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (September 2001). The burden is on the County to show that DC lived with petitioner and the children during the entire time periods in question. The County has more than satisfied this burden. Therefore, it must be concluded that DC lived with petitioner and the children during the entire time period in question.

The County presented overwhelming convincing evidence that establishes that DC lived with petitioner and the children during the all relevant time periods. This includes: documentation from the Wisconsin Department of Transportation ["DOT"] (vehicle titles; driver's license); credit reports from *TransUnion* and *Experian*; Wisconsin Circuit court records; voter registration; voting records; child support records (both Wisconsin and Illinois); school records; *Facebook* entries; interviews with petitioner's neighbors; interviews with those at the address in La Crosse where DC was claimed to have lived; observation of DC traveling from work to the address where petitioner and the children live; an investigative report dated May 13, 2013; and , a second investigative report dated April 16, 2014.

Petitioner testified that she and DC were together but fought and could not make it work. She testified that DC uses her address as his mailing address and that he also used other addresses. She testified that she and DC begin dating again in the summer of 2013, that DC moved back in with her in March 2014 (but was not "full moved-in" until the summer of 2014), and that she notified the County of this. Given all of the other evidence in the record of this matter, petitioner's claim that DC did not live with her (and the children) during the time period of the overpayments is simply not credible.

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<sup>1</sup> The evidence in the record of this matter is that DC made over \$50,000 in 2013 alone.

Petitioner never reported to the County that DC was living with her during the time period of the overpayments detailed in *Findings of Fact #2*, above. Therefore, it was correct to establish against petitioner the 7 MA overpayment Claims noted above.

**CONCLUSIONS OF LAW**

For the reasons discussed above, the following 7 Claims may be established against petitioner for overpayments of MA in the total amount of \$5,602.59 covering the time period October 1, 2011 to March 31, 2014:

- (I) Claim # [REDACTED]; October 1, 2011 to September 30, 2012; \$1,824.00;
- (II) Claim # [REDACTED]; January 1, 2013 to July 31, 2013; \$274.00;
- (III) Claim # [REDACTED]; October 1, 2012 to July 31, 2013; \$2,043.65;
- (IV) Claim # [REDACTED]; October 1, 2013 to March 31, 2014; \$408.00;
- (V) Claim # [REDACTED]; October 1, 2013 to January 31, 2014; \$370.94;
- (VI) Claim # [REDACTED]; January 1, 2013 to July 31, 2013; \$274.00; and,
- (VII) Claim # [REDACTED]; October 1, 2013 to March 31, 2014; \$408.00.

**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 16th day of September, 2014

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\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 September 16, 2014.

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