



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/159519

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Portage County Department of Human Services [“County”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on September 3, 2014. 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-159518.

The issue for determination is it was correct to establish the following Claim against petitioner for an alleged overpayment of BadgerCare Plus [“BC+”] MA: Claim # [REDACTED]; February 1, 2014 to March 31, 2014; in the total amount of \$963.60.

There appeared at that time via telephone 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: Lori Yenter, ESS

Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

OTHER PERSONS PRESENT:

[REDACTED], Manager, O'Brien & Associates
[REDACTED], Investigator, O'Brien & Associates
[REDACTED], petitioner's husband

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County, Wisconsin.
2. The County established the following Claim against petitioner for an alleged overpayment of BC+ MA: Claim # [REDACTED]; February 1, 2014 to March 31, 2014; in the total amount of \$963.60.
3. Petitioner's BC+ MA group consists of petitioner, her husband, and her children.
4. The alleged BC+ MA overpayment detailed in *Finding of Fact #2*, above, is based on the County's determination that petitioner was not living with her husband and children during the time period of the alleged overpayment.

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 BC+ 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. To be considered a parent of a child under age 19 for BC+ purposes, the child must be under the care of that individual at least 40% of the time. BC+EH 2.2.1. Additionally, a child and that child's parent can be in the same BC+ Test Group even when not living together if either is temporarily absent, provided that the continuous absence is expected to be for no more than six months. BC+EH 2.4.2.1

It is not disputed that in late December 2014, due to her need for treatment for her drug and alcohol problems and a Child and Protective Services ["CPS"] investigation, petitioner temporarily left the home where her husband and children lived and went to stay elsewhere. During her absence she stayed with her mother at times and with her grandmother at other times.

The evidence in the record of this matter is mixed as to the amount of time petitioner was absent each week and as to when she returned to live continuously with her husband and children. The County's evidence consists solely of an investigative report dated June 9, 2014. That investigative report concludes that "[f]rom the end of December 2013 to the end of April 2014, [petitioner] was pretty much out of the home, though she did go to visit on occasion. In May 2014 and [sic] so far in June 2014, she was spending 2 or 3 nights on the weekends in the home"

The investigative report is not consistent with the other evidence in the record of this matter. First, petitioner and her husband testified credibly that in January 2014 petitioner started spending "weekends" -- meaning 2 to 4 days (sometimes not leaving until Monday morning) -- with her family. This is corroborated by letters from petitioner's mother, petitioner's grandmother, a friend of petitioner's husband, petitioner's sister-in-law, a neighbor, and another friend of petitioner's husband. Second, these same 6 letters are also convincing evidence that petitioner started living with her family fulltime again in April 2014 (not June 2014 as claimed by the County): ("she returned back to her home in April 2014 . . ."; "[Petitioner] did return home I believe it was the end of April and she has been there ever since."; "[Petitioner] has answered their home phone several times when I have called since late April till present time."; "I have seen [petitioner] at her residence [where her husband and children live] every day from at least the end of April till present time."; "I can be a witness from April 2014 till now [petitioner] has been living at the residence [where her husband and children live]. And she's there when I come to the residence."). Third, petitioner herself testified credibly that she again begin living fulltime with her husband and children at the end of April or the beginning of May.

This matter must be decided a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (February 2013). Given the mixed state of the evidence in the record of this matter it cannot be concluded that petitioner did not live with her husband and children at least 40% of the time during the entire time period of the alleged overpayment (although it appears that she stayed elsewhere for at least part of that time period). There is strong evidence that petitioner was living with her husband and children for 40% of the time for at least part of the time period of the alleged overpayment. Furthermore, there is convincing evidence that petitioner's continuous absence was expected to be for no more than six months (in which case she would be considered "temporarily absent" and still eligible for BC+).

The County may reestablish an MA overpayment against petitioner if it obtains additional evidence.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to establish the following Claim against petitioner for an overpayment of MA: Claim # [REDACTED]; February 1, 2014 to March 31, 2014; in the total amount of \$963.60.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County and that, within 10 days of the date of this *Decision*, the County not establish the following claim against petitioner for an alleged overpayment of MA and send a letter to petitioner stating that it has done this: Claim # [REDACTED]; February 1, 2014 to March 31, 2014; in the total amount of \$963.60.

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 12th day of September, 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 September 12, 2014.

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