



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/159868

PRELIMINARY RECITALS

Pursuant to a petition filed August 13, 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 11, 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, ESS
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 October 1, 2012 through April 30, 2013.

3. In September 2012, petitioner and her husband met with their caseworker and reported to the agency that they had new employment and health insurance through their employer, thereby cancelling their request for BCP coverage.
4. On July 31, 2014 the agency issued two notices of MA overpayments to the petitioner advising her that (1) she had an overpayment of \$380 for the period of October 1, 2012 through April 30, 2013 due to premium due for one child; (2) she had an overpayment of \$770 for January 2013 due to the capitation rate paid for petitioner's MA. Exhibits 1 and 4.

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In this case, the county agency has the burden of proof to establish that the action taken by the agency was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

The Department may recover any overpayment of 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 Wis. Adm. Code, §DHS 108.03(3)b and *BadgerCare + Eligibility Handbook*, §§28.1 and 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 agency's position was that petitioner failed to report the new income that put them over their reporting requirement, and for which a premium would have been due, or for which would have caused parental ineligibility.

Petitioner appeared at hearing and did not dispute the income or the calculations made for the overpayment. Her testimony was that she had met with her caseworker in September 2012 to report the new employment and to cancel the MA. She named the person whom she met with and was credible in her statements. She further explained that she never received any mail/notices from the agency after that time, until she received the notice of overpayment. The agency's records show that a notice of review was mailed to petitioner in March 2013, but it was returned as undeliverable. The records also show that the agency then called petitioner to request an address update, which petitioner provided. Two notices issued after that phone call were still mailed to the incorrect address. However, that update appears to have been enough to open her MA without a request for same in April 2013, which then prompted the agency to review her case in which it found the employment income, which prompted the overpayment.

The preponderance of the credible evidence supports petitioner's version of events. The agency was not able to or did not produce the caseworker to rebut petitioner's version of events. The petitioner credibly rebutted the agency's evidence. Therefore, I must find that the county agency incorrectly seeks to recover these benefits.

CONCLUSIONS OF LAW

The agency has not met its burden of proof to establish an overpayment of MA benefits.

THEREFORE, it is

ORDERED

That the petition herein be remanded to the agency with instructions to rescind and/or cease collection efforts for the MA overpayments of \$380 and \$770 for the period of October 1, 2012 through April 30, 2013 against the petitioner. These actions shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 21st day of October, 2014

\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 21, 2014.

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