



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/159984

PRELIMINARY RECITALS

Pursuant to a petition filed August 18, 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 [“County”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on October 7, 2014, at Janesville, Wisconsin. The record was held open until October 10, 2014.

The issue for determination is whether the following Claim may be established against petitioner for alleged overpayments of MA: Claim # [REDACTED]; July 1, 2013 to November 30, 2013; \$1,122.98.

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: Mary Donahue, ES Supervisor
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County, Wisconsin.
2. The County established the following Claim against petitioner for alleged overpayments of MA: Claim # [REDACTED]; July 1, 2013 to November 30, 2013; \$1,122.98.
3. On May 3, 2014 petitioner starting working at [REDACTED]; she reported this job to the County via telephone on May 3, 2014.
4. The County established the overpayment detailed in *Findings if Fact #2*, above, because it maintains that petitioner failed to report her job at [REDACTED] and that the income from that job put her over the MA income limit.

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 failed to report her job at [REDACTED] and that the income from that job put her over the MA income limit.

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 petitioner failed to report her job at [REDACTED]. The preponderance of the credible evidence is that petitioner reported her [REDACTED] job to the County via telephone on May 3, 2014. Petitioner, her husband, and her mother all testified credibility that that was the case. The County offered little to support its contention other the absence of a May 3, 2014 entry in its electronic *Case Comments*. Therefore, it was not correct to establish the alleged MA overpayment Claim noted above.

CONCLUSIONS OF LAW

For the reasons discussed above, the following Claim may not be established against petitioner for alleged overpayments of MA: Claim # [REDACTED]; July 1, 2013 to November 30, 2013; \$1,122.98.

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 alleged overpayments of MA and send a letter to petitioner stating that it has done this: Claim # [REDACTED]; July 1, 2013 to November 30, 2013; \$1,122.98.

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 13th day of October, 2014

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 13, 2014.

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