



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted]
[Redacted]
[Redacted] 3

DECISION

MOP/160047

PRELIMINARY RECITALS

Pursuant to a petition filed August 21, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Iowa County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on October 7, 2014.

The issue for determination is whether the following 3 Claims may be established against petitioner for alleged overpayments of MA in the total amount of \$5,253.06 covering the time period July 1, 2012 to December 31, 2013:

- (I) Claim # [Redacted]; July 1, 2012 to October 31, 2012; \$1,253.83;
(II) Claim # [Redacted]; November 1, 2012 to October 31, 2013; \$3,313.47; and,
(III) Claim # [Redacted]; November 1, 2013 to December 31, 2013; \$685.76.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
[Redacted] 3

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jenny Wasley-Riley, ESS
Iowa County Department of Social Services
303 W Chapel Street, Ste 2300
Dodgeville, WI 53533

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Iowa County, Wisconsin.
2. The County established the following 3 Claims against petitioner for alleged overpayments of MA in the total amount of \$5,253.06 covering the time period July 1, 2012 to December 31, 2013:
 - (I) Claim # [REDACTED]; July 1, 2012 to October 31, 2012; \$1,253.83;
 - (II) Claim # [REDACTED]; November 1, 2012 to October 31, 2013; \$3,313.47; and,
 - (III) Claim # [REDACTED]; November 1, 2013 to December 31, 2013; \$685.76.
3. On May 17, 2012 petitioner applied with the County for MA and reported that she received money for caring for individuals in her Adult Family Home.
4. The County established the overpayments detailed in *Findings of Fact #2*, above, because it maintains that the income from petitioner's Adult Family Home 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 the income from petitioner's Adult Family Home 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 not only that the income from petitioner's Adult Family Home put her over the MA income limit but also that petitioner failed to report that income. The preponderance of the credible evidence is that when petitioner applied for MA on May 17, 2012 she reported to the County that she received money for caring for individuals in her Adult Family Home. Petitioner testified credibility in this regard. Petitioner's husband corroborated

petitioner's testimony. The County offered no evidence to the contrary. Therefore, it was not correct to establish the alleged MA overpayment Claims noted above.

CONCLUSIONS OF LAW

For the reasons discussed above, the following 3 Claims may not be established against petitioner for alleged overpayments of MA in the total amount of \$5,253.06 covering the time period July 1, 2012 to December 31, 2013:

- (I) Claim # [REDACTED]; July 1, 2012 to October 31, 2012; \$1,253.83;
- (II) Claim # [REDACTED]; November 1, 2012 to October 31, 2013; \$3,313.47; and,
- (III) Claim # [REDACTED]; November 1, 2013 to December 31, 2013; \$685.76.

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 3 Claims against petitioner for alleged overpayments of MA in the total amount of \$5,253.06 covering the time period July 1, 2012 to December 31, 2013:

- (I) Claim # [REDACTED]; July 1, 2012 to October 31, 2012; \$1,253.83;
- (II) Claim # [REDACTED]; November 1, 2012 to October 31, 2013; \$3,313.47; and,
- (III) Claim # [REDACTED]; November 1, 2013 to December 31, 2013; \$685.76.

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 14th day of October, 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 October 14, 2014.

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