



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/ [Redacted]

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Lafayette County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on April 09, 2015. Four previously scheduled hearings were rescheduled at petitioner's request.

The issue for determination is whether the petitioner must repay an overpayment of medical assistance.

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: Crissy Black

Lafayette County Department of Human Services
627 Main Street
Darlington, WI 53530

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Lafayette County, and was an MA recipient (assistance group of 1).
2. Petitioner was employed at a [Redacted] as of approximately June 23, 2014. Due to an oversight, petitioner failed to report this income.

3. The respondent subsequently became aware of petitioner's earned income via a state wage match.
4. By notice dated November 3, 2014, the county informed petitioner that he was overpaid MA capitation fees totaling \$1,320.24 from August 1, 2014 – October 31, 2014, due to client error in failing to report income. The overpayment was assigned claim no. 1900418281.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any 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.
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.

See also the department's BC+ Handbook, § 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The primary issue is whether the overpayment was caused by agency or client error. Petitioner did not contest the calculations; his position was that he was not timely reminded of the requirement that he report income changes. The respondent testified that petitioner had been sent a notice as recently as March 27, 2014, which would have reminded him of his need to report changes within 10 days. Petitioner testified that he was generally aware of his duty to report, but since he didn't use the MA, the failure to report was a simple oversight. Petitioner further indicated that he cannot afford this liability at this time.

I conclude that the respondent has established that the petitioner's error, while not intentional, caused the overpayment. As such, petitioner must be held liable. Furthermore, there is nothing in the law that allows the Division of Hearings and Appeals to prevent the collection of an MA overpayment due to financial hardship. The petitioner has requested that the administrative law judge grant him relief from the program requirements on the basis of fairness. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, he is liable for the overpayment; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

Petitioner was overpaid MA capitation fees totaling \$1,320.24 from August 1, 2014 – October 31, 2014, due to client error in failing to report income.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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.

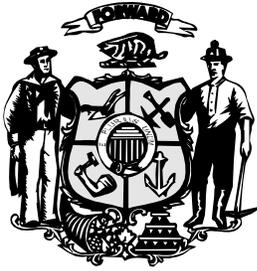
APPEAL TO COURT

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 12th day of May, 2015.

\sPeter McCombs
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 May 12, 2015.

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