



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact

DECISION

MOP/161986

PRELIMINARY RECITALS

Pursuant to a petition filed November 17, 2014, filed under Wis. Stat. § 49.45(5) and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services ["County"] in regard to Medical Assistance benefits ["MA"], a Hearing was held on December 23, 2014 at the offices of the Division of Hearings and Appeals ["DHA"] in Madison, Wisconsin. At petitioner's request a Hearing scheduled for December 16, 2014 was rescheduled. 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-161984.

The issue for determination is whether it was correct to establish the following 2 Claims against petitioner for alleged overpayments of BadgerCare Plus ["BC+"] MA in the total amount of \$405.00 for the time period June 1, 2013 to August 31, 2014:

Claim Number Redact; June 1, 2013 to February 28, 2014; \$345.00; and,
Claim Number Redact; March 1, 2014 to August 31, 2014; \$60.00.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Petitioner's Representative:

Redact
Attorney
Redact, S.C.
Redact
Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: Redact, Overpayment Specialist (appeared via telephone)
Dane County Department of Human Services

1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redact]) is a resident of Adams County, Wisconsin.
- 2. The County established the following 2 Claims against petitioner for alleged overpayment of BC+ MA in the total amount of \$405.00 for the time period June 1, 2013 to August 31, 2014:
Claim Number [Redact]; June 1, 2013 to February 28, 2014; \$345.00; and,
Claim Number [Redact]; March 1, 2014 to August 31, 2014; \$60.00.

Exhibits A1, A2, B, R3, R4 & R5.

- 3. Petitioner was married to adult female CMM from June 2001 to June 2012 when they got divorced. Exhibits B, R1 & R6.
- 4. Petitioner and CMM have a minor daughter [“HEM”] in common who was born in May 2008. Exhibit B, R6.

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) (May 2010); 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 presented convincing and credible evidence that CMM and HEM lived with petitioner during the time period in question. However, the 2 alleged overpayments in this matter span the time period

June 1, 2013 to August 31, 2014.¹ Effective February 1, 2014 BC+ MA eligibility is determined using MAGI² rules. BC+EH 2.3.3. Under MAGI rules BC+ Test Groups are based on the concept of an individual's tax household, not necessarily on the physical household or family relationships. BC+EH 2.3.2. For time periods after February 1, 2014 the County has presented insufficient evidence to show that, under MAGI rules, petitioner, CMM, and HEM were part of the same BC+ Test Group. Therefore, the overpayments cannot be sustained and must be reversed. The County may reestablish the overpayments if it can present sufficient evidence to show that petitioner, CMM, and HEM were part of the same BC+ Test Group during the relevant time period using the applicable rules (non-MAGI rules for part of the time period and MAGI rules for another part of the time period).

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to establish the following 2 Claims against petitioner for alleged overpayments of BC+ MA in the total amount of \$405.00 for the time period June 1, 2013 to August 31, 2014:

Claim Number [Redact]; June 1, 2013 to February 28, 2014; \$345.00; and,
Claim Number [Redact]; March 1, 2014 to August 31, 2014; \$60.00.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, that, within 10 days of the date of this *Decision*, the County take all necessary steps to REVERSE the following 2 Claims that were established against petitioner for alleged MA overpayments in the total amount of \$405.00 for the time period June 1, 2013 to August 31, 2014: Claim Number [Redact]; June 1, 2013 to February 28, 2014; \$345.00; and, Claim Number [Redact]; March 1, 2014 to August 31, 2014; \$60.00; the County may not take any action to enforce or collect those 2 Claims.

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.

¹ The 2 Claims are from June 1, 2013 to February 28, 2014 and March 1, 2014 to August 31, 2014.

² *MAGI* stands for "Modified Adjusted Gross Income". See, BC+EH 2.3.2.

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 7th day of January, 2015

\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 January 7, 2015.

Dane County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney Redact