



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MOP/162298

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Ashland County Department of Human Services in regard to Medical Assistance, a hearing was held on January 15, 2015, at Ashland, Wisconsin.

The issue for determination is whether the county agency correctly seeks to recover all BadgerCare Plus payments made to the petitioner from April 1, 2014, through August 31, 2014, because she allegedly failed to report that her daughter was living with her.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact

Ashland County Department of Human Services
630 Sanborn Avenue
Ashland, WI 54806

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # Redact) is a resident of Ashland County.
2. The county agency notified the petitioner on October 14, 2014, that it would seek to recover \$4,789.79 in BadgerCare Plus benefits her household received from April 14, 2014, through

August 14, 2014. The agency contends that the petitioner's daughter had moved out of her household but that she did not report this.

3. The petitioner's daughter lived with her from March through August 2014.

### DISCUSSION

Medical assistance recipients must report relevant changes to the agency within 10 days. Wis. Admin. Code, § DHS § 104.02(6). The petitioner receives BadgerCare Plus, the medical assistance program for those whose income is below the federal poverty level who are not elderly or disabled. Wis. Stat. § 49.471. Because the poverty level depends upon the number of persons in the household, recipients must report when someone leaves the household. The county agency alleges that from April 14, 2014, through August 14, 2014, the petitioner received \$4,789.79 more in BadgerCare Plus benefits that her household was entitled to because she failed to report that her daughter, [Redact], moved out of her household. The department may recover medical assistance overpayments that occur because the recipient fails to report any change in her situation that would have affected her eligibility for benefits. Wis. Stat. § 49.497(1).

After listening to both sides, I have no doubt that [Redact] lived primarily the petitioner throughout the period in question. The county agency came to the opposite conclusion after relying on a report from [Redact] [Redact] [Redact]. Mr. [Redact] came to his conclusion after failing to even attempt to interview the petitioner. Mr. [Redact]'s lapse is part of now-routine pattern of poor investigations by [Redact] [Redact]. At various times, they have relied upon summarized statements from anonymous witnesses at the hearing, they have not interviewed essential witnesses, they have not obtained signed statements from those they interview, and they have not made witnesses available for a hearing. In a proper investigation, the investigator attempts to interview all relevant witnesses on both sides. If a witness will not allow his name to be used, the investigator seeks to find another witness with the same evidence. The investigator writes up statements and seeks signatures for those statements so that they can be used to refresh the witness's recollection or impeach the witness's testimony if it changes at the hearing. Relevant witnesses are made available for the hearing—by a subpoena if necessary—because, even in administrative hearings with their relaxed rules of evidence, live testimony is preferred (and often required) over hearsay.

[Redact], the mother of [Redact]'s boyfriend, [Redact], alleged that [Redact] moved in with her and her son. [Redact] then tried to claim [Redact] as part of her medical assistance household. [Redact]'s situation clearly was not stable. She temporarily dropped out of high school in March 2014 because of anxiety. She received inpatient mental health treatment beginning on April 28, 2014. She did spend some time at [Redact]'s house, but so did the petitioner. During part of the time [Redact] spent with [Redact], she babysat children living with near [Redact]'s house. The petitioner would bring food to [Redact]'s house when [Redact] stayed there. In the spring, the petitioner helped [Redact] set up tables for [Redact]'s high school graduation party, and she and her daughter would both stay with [Redact]. In July, the petitioner moved in with [Redact], so all of them lived together.

A person who is temporarily absent from a household is still considered part of that household. *BadgerCare Plus Handbook*, § 2.4. I do not find any credible evidence that [Redact] was ever more than temporarily absent from her mother's household. Other than after July 1, 2014, she rarely, if ever, spent more than a few days at a time in [Redact]'s house; after July 1 her mother had also moved there, so they were all part of the same household. This finding is based primarily upon the petitioner's testimony being more credible than [Redact]'s. This credibility finding is based upon the demeanor of the witnesses and the consistency and detailed nature of the petitioner's testimony. Because the sole basis of the overpayment is that [Redact] did not live with the petitioner, there is no overpayment.

**CONCLUSIONS OF LAW**

The petitioner did not receive an overpayment of BadgerCare Plus from April through September 2014 because her daughter remained in her household throughout this period.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision, it end all attempts to recover any of the BadgerCare Plus benefits the petitioner from April through August 2014.

**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 3rd day of February, 2015

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\sMichael D. O'Brien  
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 February 3, 2015.

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