FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/162453

PRELIMINARY RECITALS

Pursuant to a petition filed December 5, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rusk County Department of Social Services in regard to Medical Assistance, a hearing was held on February 18, 2015, at Ladysmith, Wisconsin.

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:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Beulah Garcia
Rusk County Department of Social Services
Courthouse
311 Miner Avenue East, Suite C240
Ladysmith, WI 54848

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [redacted]) is a resident of Rusk County.
2. The county agency seeks to recover $192 in medical assistance received by the petitioner from September through November 2012 because it contends that she failed to report income that affected her benefits.

3. The petitioner reported all changes of her income that occurred in 2012 to the agency on time.

DISCUSSION

The department may recover any overpayment of medical assistance that occurs because a "recipient" or anyone "responsible for giving information on the recipient's behalf" fails "to report any change in the recipient's financial …that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements." Wis. Stat. § 49.471(10)(b)3; *BadgerCare Plus Handbook,* 19.1. The county agency seeks to recover $192 in medical assistance received by the petitioner from September through November 2012 because it contends that she failed to report income that affected her benefits. She contends that she is not responsible for the overpayment because she did in fact report the change in income.

The agency, as the party that seeks to change the current state of affairs by recovering an overpayment, has the burden of proving that an overpayment occurred by the preponderance of the credible evidence. There is not a lot of evidence concerning whether the petitioner reported her change of income. She testified that she did, but she has no documentation such as a fax receipt, telephone record, or acknowledgement to back up her claim. Nothing in the agency's records indicate that it received anything from the petitioner informing it that her income had increased, but none of its workers who would have handled such a document testified or were available for questioning. Agency records are generally accurate. However, this occurred when the department was making the transition to the consortia and Centralized Data Processing Unit. The transition was full of growing pains: Almost every month, petitioners testified about lost and misplaced documents they submitted to these units. Although not every complaint about these problems was accurate, the testimony was frequent and consistent enough to establish that there was a problem, and often that testimony was bolstered with hard evidence such as confirmation that the document had been received. The petitioner in this matter was credible. She testified that she always reported her changes of income immediately and had done so frequently. Of course, she could have been mistaken about this particular instance. But unless the weight of the evidence tips at least slightly in the agency's favor, she does not have to repay the overpayment. Based upon her testimony and the lack of first-hand testimony against her, I find that she did report the change. Therefore, the agency cannot recover the alleged overpayment.

CONCLUSIONS OF LAW

The county agency cannot recover the overpayment of medical assistance the petitioner allegedly received from September through November 2012 because she reported any change of income to the agency within the period she was required to do so.

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 take all steps necessary to stop collecting any overpayment of medical assistance received by the petitioner from September through November 2012.

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 2nd day of March, 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 March 2, 2015.

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