



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MAC/162695

PRELIMINARY RECITALS

Pursuant to a petition filed December 17, 2014, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on January 21, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department has incorrectly determined that the petitioner is not paying on an overpayment liability.

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, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Milwaukee County.
2. The petitioner received MA/BadgerCare Plus benefits in at least March, April and May, 2014. Due to a state law change, any related adults in the household were no longer eligible for BadgerCare Plus (BCP), due to excess income, effective April 1, 2014. The Department issued

written notice of this law change and the impending benefit discontinuance on March 10, 2014. The petitioner timely appealed, and requested that her benefits be continued pending appeal. She subsequently realized that her appeal was likely to be unsuccessful, and withdrew her hearing request on approximately April 21, 2014. Nonetheless, the agency continued her benefits for the month of May 2014. Due to aid continuation, an \$875 overpayment for the period resulted. A MA/BCP overpayment notice was issued to the petitioner on June 30, 2014, and was followed by a repayment agreement (July 2, 2014) and dunning letters (August 4, September 3, October 2, 2014). *See*, Exhibits 8, 9, 10. The petitioner did not respond to these documents. All of the documents were sent to the petitioner's last known address of [REDACTED] *Redact*.

3. The Department issued an *Order to Compel Payment of Liability* to the petitioner on November 13, 2014. The petitioner appealed.
4. The petitioner has made no payments towards the \$875 overpayment and has not executed a repayment agreement. She does not deny that she is the named debtor.

DISCUSSION

Following issuance of an MA/BadgerCare Plus overpayment notice, a person who then fails to enter into or adhere to a repayment agreement may be subject to an order to compel payment of that liability:

49.497(1m)(a) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under [ch. 227](#) by filing with the department a request for a hearing within 30 days after the date of the order. *The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.*

(emphasis added)

Wis. Stat. §49.497(1m)(a).

The petitioner does not contest that she has not entered into a repayment agreement and has not made payments against the debt. The petitioner did assert that she should not be responsible for paying back the May 2014 BCP benefits. She testified that she obtained a federal Marketplace policy covering May 2014, so she should not have to pay both a Marketplace premium and the BCP overpayment. She also questions why the agency continued her BCP after she withdrew her hearing request. Both of these arguments could have been appropriately raised if the petitioner had timely filed a hearing request when the BCP overpayment notice was issued on June 30, 2014 (which included hearings rights information and a 45-day deadline). The petitioner asserted that she moved to a different unit on her street in May 2014, and therefore did not receive the overpayment notice. She did not report an address change to the agency, which she is required to do, so the agency used the last known address. The fault of non-receipt of the overpayment notice rests with the petitioner. Because there is no factual dispute that the petitioner has not repaid the overpayment, and has not entered into a repayment agreement by the time of hearing, there is no issue for this administrative law judge to decide herein.

CONCLUSIONS OF LAW

Because there is no factual dispute that the petitioner has not repaid the overpayment, and has not entered into a repayment agreement by the time of hearing, there is no issue for this administrative law judge to decide herein.

THEREFORE, it is **ORDERED**

That the petition 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 27th day of January, 2015

\sNancy J. Gagnon
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 27, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability