



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/162847

PRELIMINARY RECITALS

Pursuant to a petition filed December 22, 2014, under Wis. Stat., §49.45(5), to review a decision by the Marathon County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on January 28, 2015, by telephone.

The issue for determination is whether petitioner was overpaid MA because she did not report her son's incarceration.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Maikou Yang
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Marathon County.
2. In 2013 petitioner received BadgerCare Plus (BC+) MA as a two-person household with her son. Her son was incarcerated on February 15, 2013, and remained incarcerated until June 17, 2013. Petitioner did not report the incarceration to the economic support agency.

3. The county determined that petitioner was overpaid BC+ in April and May, 2013. Petitioner's son was ineligible because he was incarcerated, and petitioner was ineligible because she was not the caretaker of a minor child.
4. By a notice dated December 10, 2014, the county informed petitioner that she was overpaid \$489.40 in BC+ in April and May, 2014. Had she reported the incarceration timely she would have been ineligible for BC+ during those two months.

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, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

To be eligible for BC+ in 2013, a person had to be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. Inmates of public institutions were not considered to be living in a BC+ household. Wis. Admin. Code, §DHS 103.03(6); BC+ Handbook, App. 2.4.1.

Petitioner's primary position was that she reported the incarceration to the proper authorities. While there is evidence that petitioner reported the incarceration to the social worker and to her son's schools, there is simply no evidence at all that she ever reported it to the BC+ agency. Petitioner testified that she reported it to the call center and that she was told that she was ineligible for BC+ anyway because her son was turning age 18. That testimony gives me more reason to conclude that the incarceration was not reported to the economic support agency that handles BC+ because the advice was wrong. In 2013 a "minor" child remained eligible for BC+ until age 19, and any economic support worker would have known that.

In addition, during the period of incarceration petitioner received five eligibility notices, all of which showed her son as being in the household. They show that economic support was unaware of the incarceration.

I suggested that perhaps the absence could have been considered temporary which would have maintained BC+ eligibility. However, in reviewing BC+ policy, I found that while there is a temporary absence

policy, a child who is incarcerated cannot be considered temporarily absent under the policy. BC+ Handbook, App. 2.4.2.

I must conclude that the county correctly determined the MA overpayment. Petitioner received MA during two months when she was ineligible due to not having a minor child in her household, when petitioner failed to report her son's incarceration to the economic support agency that handled BC+.

CONCLUSIONS OF LAW

The county correctly determined an MA overpayment caused by petitioner's failure to report that her son was incarcerated.

THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby 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 3rd day of February, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 3, 2015.

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