



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

MTI/162901

PRELIMINARY RECITALS

Pursuant to a petition filed December 27, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the La Crosse County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on February 3, 2015. The Hearing for this matter was held at the same time as the Hearing for the following 3 closely related matter concerning petitioner and her husband: FTI-162897; MOP-162898; and, FTI-162899.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following MA overpayment: Claim Number [redacted]; July 1, 2012 to February 28, 2013; \$1,839.69.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Represented by:

[redacted] (not present at February 3, 2015 Hearing)
[redacted]

[redacted], petitioner's husband
[redacted]

Respondent:

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

BY: Bob Uebele, ESS
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Wisconsin but is now a resident of [REDACTED].
2. The following Claim was established against petitioner for an overpayment of MA: Claim Number [REDACTED]; July 1, 2012 to February 28, 2013; \$1,839.69.
3. Petitioner was sent a written *Medicaid / BadgerCare Overpayment Notice* dated November 26, 2013 informing her of the MA overpayment identified in *Findings of Fact #2* but never received that notice because she had moved.
4. On May 24, 2012 petitioner reported income that was not correct (the income reported was too low); on July 27, 2012 petitioner incorrectly reported that her husband was not working.
5. The MA overpayment in *Findings of Fact #2*, above, resulted from the fact that petitioner failed to report her correct income; as a result petitioner was not charged the correct MA premium when she should have been.

DISCUSSION

The state shall, at least annually, certify to the Department of Revenue amounts that it has determined it may recover resulting from overpayment of Food Stamps ["FS"], overpayment of Aid to Families with Dependent Children ["AFDC"], overpayment of Wisconsin Works benefits ["W-2"], and overpayment of Medical Assistance ["MA"]. Wis. Stat. § 49.85(2) (2013-14).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a Hearing. Wis. Stat. § 49.85(3) (2013-14).

The Hearing right is described as follows:

"If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing."

Wis. Stat. § 49.85(4) (2013-14).

In this case petitioner did not have a prior opportunity for a Hearing because she never received the November 26, 2013 *Medicaid / BadgerCare Overpayment Notice*. Therefore, the scope of this tax intercept proceeding is not limited.

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) (2013-14); See also, *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.

In this case petitioner failed to report her correct income. As a result petitioner was not charged the correct MA premium when she should have been. This caused the MA overpayment listed in *Findings of Fact #2*, above.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's Wisconsin State income tax refund may be intercepted and applied against the following MA overpayment: Claim Number [REDACTED]; July 1, 2012 to February 28, 2013; \$1,839.69.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED and DHS may certify the amount of \$1,839.69 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the MA overpayment Claim identified in *Finding of Fact #2*, above.

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 12th day of February, 2015

\sSean P. Maloney
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 12, 2015.

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