



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MAC/163054

PRELIMINARY RECITALS

Pursuant to a petition filed January 3, 2015, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus, a hearing was held on February 10, 2015, at Madison, 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:



Petitioner's Representative:

[Redacted] husband

Respondent:

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

By: Megan Thurston, Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. The petitioner received MA benefits from at least March 1, 2012, through August 31, 2012. During the March through August 2012 period, a \$1,101 overpayment occurred. An MA

overpayment notice was issued to the petitioner on October 9, 2013, and was followed by a repayment agreement (November 4, 2013) and dunning letters (December 4, 2013, January 3, 2014, February 4, 2014). The petitioner did not respond to these documents.

3. The Department issued an Order to Compel Payment of Liability to the petitioner on November 13, 2014. Exhibit 1.
4. The petitioner has made no payments towards the \$1,101 overpayment. At hearing, her husband indicated that she was aware of the overpayment liability, but had no funds with which to make repayment.

### **DISCUSSION**

Following issuance of an MA 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 was overpaid, the amount of the initial or current overpayment liability, or that she has not entered into a repayment agreement. 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 11th day of February, 2015

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\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 February 11, 2015.

Dane County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
Attorney Nicole Pellerin