



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/163241

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on February 17, 2015, at Baraboo, Wisconsin.

The issue for determination is whether the agency erred in its determination of the overpayments in claims [REDACTED] for \$371, and [REDACTED] for \$439.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Monica Johnson

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.
2. Petitioner lives with [REDACTED] [REDACTED]. Petitioner is the case head.

3. Petitioner has a child in common with [REDACTED] [REDACTED]. She also has a child of her own. The four live together.
4. The agency determined that the household exceeded the income reporting requirement of \$3,630.63 in January 2014.
5. The household exceed the income limit for BC+ for the children March 2014 through September 2014.
6. The agency calculated an overpayment for each child and sent notice.
7. Petitioner appealed.

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...**(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.**

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.

The agency argues that the household went over the reporting requirement of \$3,630.63 in January 2014 when the household income was \$3,684. The agency argues that this was to be reported by February 10th and would have affected the march MA benefits and required a premium be paid for the children's eligibility. The agency calculated the overpayments by taking the *lower* of the benefits paid in each overpayment month for each child, or the premium that should have been paid in each overpayment month. This is supported by the documents submitted by the agency. The agency also provides income documents reflecting that the family's income went even higher in the following months of the overpayment period after March 2014. These documents include a wage report for [REDACTED] [REDACTED] at [REDACTED]. [REDACTED] [REDACTED]'s income alone was over \$4,700 in July 2014.

Petitioner had not cogent argument for her failure to report the increase and the excessive income over the span of months. Petitioner explained that she could not comment on [REDACTED] [REDACTED]'s income but that "it just doesn't seem right...it's just a big misunderstanding." Petitioner then explained that she believed that the agency would take petitioner's average income over the course of a year. The BC+ Handbook allows for averaging in cases where the pay amounts and term of employment and payment are predictable. But, "[i]f neither the amount nor the frequency is predictable, **do not average; count income only for the month in which it is received.**" BC+ Handbook at § 16.6. [REDACTED] [REDACTED]'s income, while consistently over the reporting limit for the overpayment period, does fluctuate greatly. The record also indicates that his term of employment is unknown, working when he is needed. Furthermore, this claim is inconsistent with the reporting requirement stated on various past notices petitioner received including that on page 3 of the notice dated 1/17/14 (see ex. #1).

CONCLUSIONS OF LAW

The agency did not err in its determination of the overpayments in claims [REDACTED] for \$371, and [REDACTED] for \$439.

THEREFORE, it is

ORDERED

This appeal 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 24th day of March, 2015

\sJohn P. Tedesco
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 March 24, 2015.

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