



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]

DECISION

MOP/164221

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Ashland County Department of Human Services in regard to Medical Assistance, a hearing was held on March 19, 2015, at Ashland, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of medical assistance.

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: [Redacted]

Ashland County Department of Human Services
630 Sanborn Avenue
Ashland, WI 54806

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Ashland County.
2. The county agency seeks to recover \$1,022 the petitioner received in medical assistance from July 2013 through January 2014 because she allegedly failed to report a change in income.

3. The county agency notified the petitioner on November 28, 2012, that she must report to it if her household's income exceeded \$3,871.40.
4. The petitioner's household's income exceeded \$3,871.40 in May 2013.
5. The petitioner reported to the local agency that her household's income had increased.

DISCUSSION

The petitioner and her family were ongoing recipients of BadgerCare Plus, Wisconsin's primary medical assistance program. The department may recover any overpayment of medical assistance that occurs because a "recipient" or anyone "responsible for giving information on the recipient's behalf" fails "to report any change in the recipient's financial ...situation that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements." Wis. Stat. § 49.471(10)(b)3; *BadgerCare Plus Handbook*, 19.1. The county agency seeks to recover \$1,022 in medical assistance paid to the petitioner's household from July 2013 through January 2014, because it contends that she failed to report income that affected their benefits.

The county agency notified the petitioner that she must report to it if her household's income exceeded \$3,871.40. That occurred in May 2013 when her husband began working a good deal of overtime. She had to report the change to the agency within 10 days and her benefits would have been affected the month after she reported, or July 2013. Wis. Admin. Code, § DHS § 104.02(6); *BadgerCare Plus Handbook*, § 28.4.1. The agency contends that she did not report this, and as a result her household received \$1,022 more in medical assistance from July 2013 through January 2014 than it should have. She contends that she did talk to a county worker about this.

I am skeptical of the petitioner's testimony because there is no notation that she reported this and it is self-serving. Nevertheless, she is the only person with firsthand knowledge of the situation who testified. Furthermore, the burden of proof in these matters is by the preponderance of the credible evidence, a fairly low standard that requires only that one party establish that its position is more likely true than not true. Because of this, I will accept her testimony and overturn the overpayment.

CONCLUSIONS OF LAW

The county agency may not recover any overpayment made to the petitioner from July 2013 through January 2014 because she reported to the agency that her husband was working additional hours.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to correct the petitioner's records to indicate that she did not receive an overpayment of medical assistance from July 2013 through January 2014 and that it end its attempts to recover that alleged overpayment.

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 8th day of May, 2015

\sMichael D. O'Brien
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 May 8, 2015.

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