



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/164340

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on March 24, 2015.

The issue for determination is whether the agency met its burden of proof to establish an overpayment of MA benefits.

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: Jelena Jones, Fraud Specialist
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County and has been a recipient of MA.
2. On May 31, 2010 the petitioner's household income exceeded 100% of the Federal Poverty Level (FPL). That income was not reported to the agency.
3. On October 31, 2010 the petitioner's household income exceeded 185% of the FPL. That income was not reported to the agency.
4. On February 29, 2012 the petitioner's household income exceeded 185% of the FPL. That income was not reported to the agency.
5. On March 8, 2013 the agency discovered the income error and reviewed the case for a possible overpayment.
6. On January 15, 2015 the agency issued two MA Overpayment Notices to petitioner advising of MA overpayments for July 2010-May 2011 in the amount of \$1428.03 due to recipient error (claim # [REDACTED] and 990042319) and from December 2010 - May 2013 in the amount of \$2699.12 due to recipient error (claim # [REDACTED], [REDACTED], and [REDACTED]).

DISCUSSION

The Department may recover any overpayment of medical assistance (MA) that occurs because 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 [BadgerCare].
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.

Wis. Stat. §49.497; see also [BadgerCare + Eligibility Handbook](http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm), §28.2, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The MA recovery statute clearly provides for recovery of MA when a recipient fails to report income or assets which would affect eligibility. The failure does not have to be intentional. The agency did not suggest that it was making a fraud case here. Even an honest mistake of failing to report income is subject to the recovery rights for the agency.

Petitioner did not dispute the income or the calculations made for the overpayment, and has not rebutted the agency's evidence. Rather, she argues that it was unfair to find an overpayment against her when she had been told by a worker that she did not have to keep reporting the fluctuation in income. Even if the petitioner had been able to name the worker who gave her this erroneous advice or provide some corroboration that this occurred, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, [Wisconsin Socialist Workers 1976 Campaign Committee v. McCann](#), 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Based on the foregoing, I must find that the agency has established an overpayment of MA against the petitioner.

CONCLUSION OF LAW

The agency met its burden of proof to establish an overpayment of MA benefits against the petitioner for July 2010-May 2011 in the amount of \$1428.03 due to recipient error (claim # [REDACTED] and 990042319) and from December 2010 - May 2013 in the amount of \$2699.12 due to recipient error (claim # [REDACTED], [REDACTED], and [REDACTED]).

THEREFORE, it is ORDERED

The petition for review herein be 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 Milwaukee,
Wisconsin, this 22nd day of April, 2015

\sKelly Cochrane
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 April 22, 2015.

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