



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/166550

PRELIMINARY RECITALS

Pursuant to a petition filed June 06, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on July 07, 2015, at Oshkosh, Wisconsin. The record was held open for 21 days post-hearing to allow the Petitioner to submit additional information. On July 27, 2015, additional information was submitted and the record was closed.

The issue for determination is whether the agency properly seeks to recover an overissuance of MA/BC+ benefits in the total amount of \$8,544.50 for the period of January 1, 2008 – January 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jeannie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Winnebago County.

2. On September 5, 2007, the Petitioner submitted an application for healthcare benefits. In the section for reporting assets, the Petitioner listed a checking account with [REDACTED] with a balance of \$805.86 and his home. A copy of the Petitioner’s bank statement from [REDACTED] was received as verification. On January 1, 2008, Petitioner became eligible for and began receiving Medicare Premium Assistance (SLMB) benefits.
3. On November 21, 2008, Petitioner had a money market account with [REDACTED] [REDACTED] with a beginning balance of \$20,216.68.
4. In January, 2009, the Petitioner completed a renewal. He reported his only financial asset was a checking account with [REDACTED] and provided a bank statement. On January 28, 2009, the agency issued a Notice of Decision to the Petitioner informing him that his SLMB benefits would continue effective March 1, 2009. Petitioner was not eligible for benefits for February, 2009 due to failure to complete his renewal in a timely manner.
5. In July, 2011, [REDACTED] acquired [REDACTED]. The Petitioner’s account(s) were transferred to [REDACTED] accounts.
6. In 2010, 2011, 2012, 2013 and 2014, the Petitioner completed annual reviews for the SLMB benefits. The only asset he reported was his checking account. He provided a bank statement as verification each year.
7. On December 12, 2014, the agency discovered assets of the Petitioner that it determined were not previously reported and not considered in determining the Petitioner’s eligibility for SLMB benefits. Those assets included the following accounts with [REDACTED]: a savings account, another checking account, a money market account and two certificates of deposit (CDs). The history of the balance of the Petitioner’s accounts were as follows:

	4/1/13	7/1/13	4/1/14	10/1/14
CD #1	\$ 1,134	\$ 1,134	\$ 1,171	\$ 1,172
CD #2	\$ 1,134	\$ 1,134	\$ 1,171	\$ 1,172
Money market	\$11,549	\$ 7,943	\$10,227	\$10,229
Checking #1	\$ 620	\$ 1,185	\$ 1,032	\$ 1,384
Checking #2	\$ 9	\$ 840	\$ 310	\$ 475
Savings	\$ 1,772	\$ 711	\$ 2,173	\$ 598

8. The history of asset limits for the SLMB program is as follows:

2008	\$4,000
2009	\$4,000
2010	\$6,600
2011	\$6,680
2012	\$6,940
2013	\$7,080
2014	\$7,160
2015	\$7,280

9. On December 29, 2014, the agency issued a Notice of Decision to the Petitioner informing him that his healthcare benefits would end effective February 1, 2015 due to income exceeding the income limit.

10. On May 1, 2015 and May 4, 2015, the agency issued the following Medical Assistance/BadgerCare/BadgerCare Plus notices to the Petitioner informing him that the agency intends to recover an overissuance of benefits as a result of client error in failing to report assets:

Claim #	Overpayment Period	Overpayment Amount
	1/1/2008 – 1/31/2008	\$ 96.40
██████████	2/1/2008 – 12/31/2008	\$1,060.40
██████████	1/1/2009 – 1/31/2009	\$ 96.40
██████████	3/1/2009 – 12/31/2009	\$ 964.00
██████████	1/1/2010 – 12/31/2010	\$1,326.00
██████████	1/1/2011 – 12/31/2011	\$1,384.80
██████████	1/1/2012 – 1/31/2012	\$ 99.90
██████████	3/1/2012 – 12/31/2012	\$ 999.00
██████████	1/1/2013 – 12/31/2013	\$1,258.80
██████████	1/1/2014 – 1/31/2014	\$ 104.90
██████████	3/1/2014 – 12/31/2014	\$1,049.00
██████████	1/1/2015 – 1/31/2015	\$ 104.90

### 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 any 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.
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.

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 has the burden of demonstrating, by a preponderance of the evidence, that there was an overpayment of benefits.

In this case, the agency contends that the Petitioner failed to disclose assets when he applied for healthcare benefits in 2007 and at his annual renewals thereafter. The agency asserts that these assets put the Petitioner over the asset limit for eligibility for the SLMB program. It seeks a total recovery of the MA premiums paid by the agency on behalf of the Petitioner for the period of January 1, 2008 – January 31, 2015.

The evidence produced by the agency demonstrates that the Petitioner opened a money market account on or about November 21, 2008 and that account had an opening balance of \$20,216.68. In his application of September 7, 2007, the Petitioner reported a checking account with a balance of \$805.86. The agency presented no evidence that the Petitioner had other assets before November 21, 2008. The Petitioner was not required to report the money market account until his next review which took place at the end of January, 2009. Therefore, I find that the agency has not met its burden of establishing that there was an overpayment of SLMB benefits to the Petitioner for the period of January 1, 2008 – January 31, 2009.

For the years of 2009 – 2012, the agency did not produce any evidence of the existence of any financial accounts of the Petitioner or the balances in those accounts. The agency did request verification from the Petitioner and from the bank. [REDACTED] was unable to provide historical information related to the [REDACTED] accounts held by the Petitioner for the years 2009 - 2012. The agency requested the information from the Petitioner during its investigation. The Petitioner did not produce any information. At the hearing, the Petitioner indicated that he would provide copies of statements if he could locate them post-hearing. No additional information about the accounts during that time period was provided.

Though it was the Petitioner's burden at the time of applications and renewals to report assets and provide verification so that the agency could make proper eligibility determinations, it is the agency's burden to provide sufficient evidence to establish that the Petitioner actually had assets that exceeded the asset limit in order to establish an overpayment. In this case, without having any evidence of the accounts that Petitioner had during the period of 2009 – 2012 and the balances in any such accounts, the agency is unable to meet its burden to establish that the Petitioner was over the asset limit. Therefore, I must conclude that there is insufficient evidence to uphold the overpayment action for the years of 2008 – 2012.

At the hearing Petitioner testified the money market account is a burial fund. He further testified that he informed the agency worker that this is a burial fund and was told by the worker that the asset was exempt. There is nothing in case comments to indicate that the Petitioner informed the agency that the money market is a burial fund.

In determining financial eligibility for SLMB benefits, the agency is to use the same rules for determining financial eligibility for Medicaid. Medicaid Eligibility Handbook (MEH), § 32.1.

According to the MEH, burial funds may be exempt up to \$1,500 in determining Medicaid eligibility. MEH, § 16.5.5. Anyone claiming a burial fund must sign a statement identifying the fund's location, type, amount, and account number. The statement must specify the month and year in which he or she first intended to set the fund aside for burial. *Id.* The fund can be excluded retroactively back to the first day of the specified month, but no earlier than November 1, 1982. It loses its exemption if it is used for anything other than the person's burial. *Id.*

In this case, the Petitioner could sign a statement that the money market account was set up as a burial fund. However, he has not done so to date despite agency workers explaining burial trusts and funds to him previously. He would also need to establish that the fund has not been used for anything other than burial expenses. The history of the money market fund from 2013 – 2015 provided by [REDACTED] shows that the fund balance has changed significantly in that time. I must conclude that the fund is being used for something other than for burial expenses and therefore it does not, at this time, qualify for an

exemption as a burial fund. Also, even if the Petitioner could establish that this is a burial fund, only \$1,500 of the fund is eligible for the exemption.

The Petitioner also testified that the CDs are not in his name but are in the names of his grandchildren and he is listed as a custodian of the accounts. The paperwork provided by the bank indicates that the CDs are in the Petitioner's name with his grandchildren listed as beneficiaries. I conclude that the CDs must, therefore, be considered assets of the Petitioner.

Even if I consider the Petitioner's assets in the light most favorable to him by allowing a \$1,500 exemption for the money market as a burial fund, the Petitioner's assets for January 1, 2013 – January 31, 2015 were as follows:

	Petitioner's assets	Asset limit
2013:	\$11,448 (on 7/1/13)	\$7,080
2014:	\$13,540 (on 10/1/14)	\$7,160

Based on the evidence, I conclude that the agency presented sufficient evidence to establish that it properly seeks to recover the following overpayment claims:

Claim # [REDACTED] for the period of 1/1/2013 – 12/31/2013 in the amount of \$1,258.80

Claim # [REDACTED] for the period of 1/1/2014 – 1/31/2014 in the amount of \$104.90

Claim # [REDACTED] for the period of 3/1/2014 – 12/31/2014 in the amount of \$1,049.00

Claim # [REDACTED] for the period of 1/1/2015 – 1/31/2015 in the amount of \$104.90

I further conclude that there is insufficient evidence to establish overpayments for Claim # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED], and # [REDACTED]. Therefore, I find that the agency must rescind those overpayments.

**CONCLUSIONS OF LAW**

The agency presented sufficient evidence to establish that it properly seeks to recover overpayments from the Petitioner for failure to report assets over the program limit for Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED] and Claim # [REDACTED].

The agency did not present sufficient evidence to establish overpayments for failure to report assets over the program limit for Claim # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED], and # [REDACTED].

**THEREFORE, it is ORDERED**

That as to Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED] and Claim # [REDACTED], the Petitioner's appeal is dismissed.

That as to Claim # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED], and # [REDACTED], the agency is ordered to take all administrative steps necessary to rescind the overpayment claims and to cease any collection efforts against the Petitioner for those claims. These actions shall be completed within 10 days of the date of this decision.

## 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 18th day of September, 2015

---

\sDebra Bursinger  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 18, 2015.

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