



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/166558

PRELIMINARY RECITALS

Pursuant to a petition filed June 09, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Calumet County Department of Human Services (the agency) in regard to Medical Assistance, a hearing was held on July 07, 2015, at Chilton, Wisconsin.

NOTE: The record was held open to allow the agency to submit additional documentation concerning the Petitioner's applications and case comments.

The agency submitted a set of case comments, an application dated July 28, 2014, an application dated January 24, 2015 and a Notice of Proof Needed dated March 4, 2015. They have been marked as Exhibits 17, 18, 19 and 20, respectively.

The issue for determination is whether the agency correctly determined that the Petitioner was overpaid BadgeCare Plus benefits for the period of April 1, 2014 through March 31, 2015.

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: Lynn Brenner, Economic Support Supervisor
Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Calumet County.
2. On July 28, 2014, the Petitioner completed an on-line ACCESS renewal, reporting four people in the household: herself and three children, [REDACTED], [REDACTED], and [REDACTED]. The Petitioner reported living at an address on [REDACTED]. That application advised the Petitioner about the need, for healthcare coverage, to report changes in income and household composition within ten days. Petitioner electronically signed the renewal, indicating that the information she provided was correct and complete and that she understood the penalties for providing false information. (Exhibit 18)
3. Petitioner's daughter, [REDACTED] came to live with the Petitioner for the entire summer in 2014. [REDACTED] was then expected to remain with the Petitioner due to issues that [REDACTED] had with her father. (Testimony of Petitioner)
4. Petitioner added [REDACTED] to her FoodShare case when it was decided [REDACTED] should remain with her, sometime in early September 2014. (Testimony of Petitioner)
5. [REDACTED] ended up returning to her father, due to behavior problem, on or about the last weekend in September (September 26 /27 / 28). (Testimony of Petitioner; Exhibit 4)
6. On January 24, 2015, the Petitioner completed an ACCESS renewal, reporting five people in the household: herself and four children, [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The Petitioner reported living at the address on [REDACTED]. That application advised the Petitioner about the need, for health care coverage, to report changes in income or household composition within ten days. The Petitioner electronically signed the renewal, indicating that the information she provided was correct and complete and that she understood the penalties for providing false information. (Exhibit 18)
7. On May 29, 2015, the agency sent the Petitioner an unsigned Wisconsin Medicaid and BadgerCare Plus Overpayment Notice, indicating the Petitioner was overpaid benefits, in the amount of \$3,662.00, for the period of April 1, 2014 through March 31, 2015. This notice included an overpayment worksheet. (Exhibit 13)
8. On June 1, 2015, the agency sent the Petitioner an automated Medical Assistance / BadgerCare / BadgerCare Plus Overpayment Notice, claim # [REDACTED], indicating that she was overpaid benefits in the amount of \$3,662.00, for the period of April 1, 2014 through March 31, 2015. This notice did not include an overpayment worksheet. (Exhibit 10)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 9, 2015. (Exhibit 1)

DISCUSSION

An "overpayment" occurs when BadgerCare+ benefits are paid for someone who was not eligible for them, or when BadgerCare+ payments are made in an incorrect amount. Some examples of how overpayments occur are concealing or not reporting income, failure to report a change in income, and/or providing misinformation at the time of [application](#) regarding any information that would affect eligibility. *Wis. Stat. § 49.497; BadgerCare+ Eligibility Handbook (BEH) § 28.1.*

The agency is required to initiate recovery of BC+ overpayments, if the incorrect payment resulted from applicant/member error; fraud/intentional program violation or member loss of an appeal. *BEH+ §28.2*

Per BEH+ §28.3, overpayments may not be recovered under the following circumstances:

1. The member reported the change timely, but the case could not be closed or the benefit reduced due to the 10-day notice requirement.
2. Agency error (keying error, math error, failure to act on a reported change, etc).
3. Normal prospective budgeting projections based on best available information.

In determining the propriety of an overpayment of benefits, the initial burden falls on the agency to prove, by a preponderance of the credible evidence, that its overpayment determination was correct.

It is the agency's position that the Petitioner was overpaid BadgerCare+ benefits between April 1, 2014 and March 31, 2015, because she lived at the [REDACTED] address with her sometimes estranged husband, [REDACTED], but failed to report [REDACTED] in the household and failed to report his income to the agency. The agency contends that [REDACTED]'s income put Petitioner's household over the income limit.

Petitioner asserts that she was living in a mobile home in Cleveland, Wisconsin from March 1, 2014 through October 1, 2014. Petitioner further states that [REDACTED] was not living with her.

Petitioner provided Exhibit 5, which is a print out of parking fees and rent fees from [REDACTED] [REDACTED], showing that Petitioner was paying rent for her mobile home between March 2014 and March 2015. This is not conclusive proof of Petitioner's residence, since she continued to pay fees after the date she claims to have moved out of the trailer. However, statements made during the hearing by [REDACTED], an investigator at [REDACTED], corroborate the Petitioner's claim that she was living in Cleveland, Wisconsin as she claims. Indeed, he indicated he spoke to individuals that placed the Petitioner at her mobile home in Cleveland, Wisconsin, through at least September 2014.

Thus, it is found that the Petitioner was actually living in Cleveland, Wisconsin from April 1, 2014, until October 1, 2014.

The next question, then, is whether [REDACTED] was living with Petitioner in Cleveland, Wisconsin. In order to prove [REDACTED] was with the Petitioner at the Cleveland residence, the agency relied upon the verbal hearsay statements of various people who live near the Petitioner's mobile home, one of whom would not provide a last name. There is nothing about their hearsay statements that make the statements inherently reliable. Moreover, the Wisconsin Supreme Court in *Gehin v. Wisconsin Group Insurance Board*, 278 Wis. 2d 111, 692 N.W.2d 572, 2005 WI 16, held that in administrative hearings, a finding of fact cannot be based solely upon hearsay evidence when it is controverted by in-person testimony. See Also *Michelle V. Housing Authority of the City of Milwaukee*, 779 N.W.2d 185, 2010 WI App 14

The agency also relied upon a letter dated February 18, 2014, from a [REDACTED], who identified himself as the park manager of the trailer park where [REDACTED] lived. However, this is again hearsay and it is multiple layers of hearsay, because [REDACTED] indicates that he is basing the information he provided on what other people told him, not his personal knowledge.

It should be noted that the report from [REDACTED] fails to indicate how these individuals identified the Petitioner and [REDACTED]. Did the investigator only mention the Petitioner and [REDACTED] by name to the interviewees or were the interviewees shown photographs? If the interviewees were shown photographs, what photographs were used?

Based upon all of the foregoing, it is found that the verbal hearsay statements of the neighbors and the hearsay within hearsay contained in the letter from [REDACTED] are not sufficient to prove [REDACTED] was living with the Petitioner.

Therefore, it is found that the agency has not met its burden to prove [REDACTED] was living with the Petitioner between April 1, 2014 and October 1, 2014.

The Petitioner concedes that on October 1, 2014, she moved to [REDACTED] and that it is a duplex owned by [REDACTED]. The Petitioner also concedes that as of April 1, 2015, the Petitioner moved in with her, because she was having financial difficulties caused, in part, by issues with her FoodShare benefits, and a previously imposed overpayment.

However, the Petitioner disputes the agency's assertion that [REDACTED] lived with her between October 1, 2014 and March 31, 2015. The Petitioner and [REDACTED] testified that during this time the Petitioner lived with an individual named [REDACTED], but spent the night with her two or three nights a week, because they were trying to reconcile. To corroborate this claim, the Petitioner produced a letter from [REDACTED] indicating that [REDACTED] lived with him from October 2014 and March 2015, but that he was gone from time to time. (See Exhibit 7)

The Petitioner's claims are iffy and this is a closer case than one might think, but the agency did not present testimony from anyone who actually had first-hand knowledge about [REDACTED]'s living arrangements.

In order to prove [REDACTED] was living with the Petitioner between October 1, 2014 and March 31, 2015, the agency relied upon the following:

1. Hearsay statements made to [REDACTED] from neighbors of the [REDACTED] duplex:

As discussed above, the hearsay information from various interviewees does not bear a sufficient indicia of reliability and cannot be relied upon when controverted by in-person testimony. As such, it does not prove where [REDACTED] was living.

2. A My Vote Wisconsin print out:

The print out shows [REDACTED] living at [REDACTED] and that he voted in November 2014. However, it does not show when Petitioner's address / voter profile was last updated. As such, the print out does not support the agency's assertion that [REDACTED] was living at [REDACTED] from October 1, 2014 through March 31, 2015.

3. CCAP printout for case [REDACTED]

[REDACTED]'s address is listed as the [REDACTED] address, but the date on which the address was updated is listed as April 5, 2014, which is outside the time period in question. As such, it does not show where [REDACTED] was living between October 1, 2014 and March 31, 2015.

4. Tax Billing and Real Estate Assessment

It is undisputed that [REDACTED] owns the duplex at [REDACTED]. It is not inconceivable, that [REDACTED] would rent out both units and live elsewhere. As such, it does not prove where [REDACTED] was living between October 1, 2014 and March 31, 2015.

5. DMV records

This is an abstract regarding vehicle registration and lists [REDACTED]'s "primary" address as [REDACTED]. However, it is unclear when this information was updated. This, like all the other exhibits, shows that [REDACTED] uses his duplex's address, but it is not conclusive proof of where [REDACTED] was living between October 1, 2014 and March 31, 2015.

(See Exhibit 15)

Based upon the foregoing, it is found that the agency has not met its burden to prove, by preponderance of the credible evidence, that the Petitioner and [REDACTED] were living together from October 1, 2014 through March 31, 2015. As such, it cannot prove an overpayment of benefits occurred during this time.

It should be noted that even if the agency had shown that Petitioner and [REDACTED] were living together, that it would not have been able to establish the accuracy of the overpayment calculation. The agency has not provided any documentation showing what [REDACTED]'s income was at the time in question. [REDACTED] claims to have used the State Wage Match, but that was not provided. In addition, there is some indication in the overpayment worksheets that Petitioner's household had unearned income, but again, the agency has not provided any proof to support the amount it used; it has not even stated what the source of that income was. As such, the agency cannot prove the Petitioner's household was over the income limit, even if [REDACTED] was living with her.

As an additional note to the parties, it is clear from the Petitioner's testimony, Exhibit 4 and Exhibit 18, that the Petitioner provided false information concerning her household composition when she completed her January 2015 renewal. In that renewal, the Petitioner continued to claim that her daughter [REDACTED] was in her household, even though [REDACTED] went back to Michigan with her father at the end of September 2014. If Petitioner received healthcare benefits for [REDACTED] as a result of that January 2015 renewal, then an overpayment of benefits likely occurred. However, it is not clear from this record whether Petitioner received benefits for [REDACTED] and if so, what the State paid for those benefits. The agency will have to look into this, if it sees fit to do so.

CONCLUSIONS OF LAW

The agency did not meet its burden to prove, by a preponderance of the credible evidence, that it correctly determined that the Petitioner was overpaid BadgeCare Plus benefits for the period of April 1, 2014 through March 31, 2015.

THEREFORE, it is

ORDERED

That the agency rescind the overpayment notice issued May 29, 2015 and that it rescind claim # [REDACTED]. The agency shall take all administrative steps to complete these tasks within ten days 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.

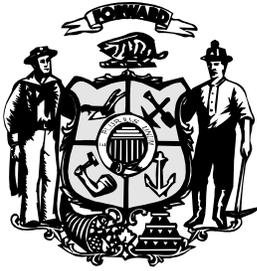
APPEAL TO COURT

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 9th day of July, 2015

\sMayumi M. Ishii
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 July 9, 2015.

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