



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MAC/167413

PRELIMINARY RECITALS

Pursuant to a petition filed July 15, 2015, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on August 20, 2015, at Waupaca, Wisconsin.

The issue for determination is whether Petitioner has not repaid or entered into a repayment agreement for a Medicaid overpayment.

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: Patricia Moe and Kristine Jordahl
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waupaca County.
2. Petitioner was sent a Notice of Administrative Action and an Order to Compel Payment of Liability, both dated July 9, 2015, that informed Petitioner that she must pay the \$17,330.20 within 30 days or a circuit court judgment would be entered against her. Petitioner timely appealed.

3. Petitioner was notified in early 2014 that she had been overpaid BadgerCare+ benefits in the amount of \$18,270. She filed an appeal with the Division of Hearings and Appeals and signed a repayment agreement at about the same time.
4. Petitioner filed an appeal with the Division of Hearings and Appeals on May 14, 2014 to contest the \$18,270 overpayment determination and a hearing was held on June 30, 2014. The Division of Hearings and Appeals conducted a hearing and issued a decision on July 23, 2014 that concluded that the agency had miscalculated the overpayment. The agency was ordered to redetermine the overpayment and that the overpayment could consist only of the amount of premiums Petitioner would have owed less any premiums paid. A new Notice of Decision was to be provided to Petitioner with new appeal rights. See Division of Hearings and Appeals case # MOP/157690. There is no information in the record for this hearing as to what the agency did as to that order or what the new overpayment amount is.
5. Petitioner signed a repayment agreement with the agency on or about May 1, 2014. That repayment agreement was not available for this hearing.
6. Petitioner did make payments in the amount of \$1040.00 on the original overpayment determination amount of \$18,270.
7. Petitioner made payments according to the original repayment agreement but apparently missed payments in September and October 2014 and January 2015.

DISCUSSION

Wis. Stat., §49.497(1m)(a) provides that if, after notice of incorrect payment is made, a recipient who is liable for an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the State of Wisconsin may bring an action to enforce the liability or may issue an order to compel payment of the liability. In this case the department has issued an order to compel payment of the liability. A person can appeal, but according to the law the only issue that can be addressed is whether s/he paid off the overpayment, or whether s/he has entered into a repayment agreement and complied with it.

Clearly the statutes limit the issue at hearing involving an Order to Compel payment to whether or not the person who was overpaid benefits has failed to repay those benefits or complied with a repayment agreement. In this case, the Division of Hearings and Appeals Decision in case # 157690 directed the agency to redetermine the amount of the overpayment and to issue a new decision to Petitioner as to the overpayment. It would be expected that Petitioner would then have the chance to appeal the determination or sign a new repayment agreement. There is no evidence here as to what the new overpayment amount is. It does not seem that a new repayment agreement was generated. Clearly this Order to Compel is based on an overpayment that was determined to be incorrect and Petitioner has made payments of \$1040. It is not possible to include that Petitioner has not repaid the BadgerCare+ benefits for which this overpayment claim was made as there is no information as to what the new overpayment amount is and, further, that Petitioner was presented with a new overpayment agreement let alone failed to comply with it.

CONCLUSIONS OF LAW

That the available evidence is not sufficient to show whether Petitioner failed to repay a BadgerCare+ overpayment or failed to comply with a corrected repayment agreement.

THEREFORE, it is

ORDERED

That this matter is remanded to the Public Assistance Collection Unit and the local agency with instructions to rescind this Order to Compel. This must be done within 10 days of the date of this Decision.

Nothing in the Decision and Order of this case should be read to prevent the agency(ies) from establishing a new repayment agreement and taking all legally permissible collection efforts on the correct amount of any corrected BadgerCare+ overpayment balance remaining.

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 2nd day of October, 2015

\sDavid D. Fleming
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 October 2, 2015.

Waupaca County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability