



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MAC/167692

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2015, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on September 01, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the Department was correct to issue a July 9, 2015 Order to Compel to the petitioner.

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: Kelly Kosloske

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Kenosha County.
2. On October 28, 2013 the Department sent the petitioner two notices of overpayment of BadgerCare (BC) Plus benefits. The notices informed the petitioner was that she was overpaid a

total amount of \$14,729.64 in BC Plus benefits for the period of February 1, 2008 through March 31, 2013.

3. On November 4, 2013 the Department sent the petitioner a BC Plus repayment agreement.
4. On December 3, 2013, January 3, 2014, and February 4, 2014 the Department sent the petitioner dunning notices reminding her of this debt.
5. On July 9, 2015 the Department sent the petitioner an Order to Compel Payment of Liability under section 49.497(1m)(a).
6. On August 3, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
7. The petitioner stated that she had filed for bankruptcy, and does not believe that she should still owe this debt.

DISCUSSION

Following issuance of an MA/MAPP overpayment notice, a person who then fails to enter into or adhere to a repayment agreement may be subject to an order to compel payment of that liability:

49.497(1m)(a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under [ch. 227](#) by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.

Wis. Stat. §49.497(1m)(a).

The above law indicates 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 than the State of Wisconsin may bring an action to enforce the liability or may issue an order to compel payment of the liability. Wis. Stat. § 49.497(1m)(a) (2007-08). In this case the State of Wisconsin has issued an order to compel payment of the liability.

The petitioner argues that she filed for bankruptcy, and that this debt was discharged as a part of her bankruptcy. The problem with this argument is that the Eastern District of Wisconsin has held that public assistance debt is not dischargeable in a bankruptcy. *Wisconsin Dept. of Workforce Dev. v. Ratliff* held that FoodShare overpayments were domestic support obligations under 11 U.S.C. § 507(a)(1)(B). 390 B.R. 607 (D. Wis. 2008). The Court reasoned that these benefits enabled Ratliff to obtain food, a basic form of support for her children. *Id.* In another case the Eastern District of Wisconsin further held that childcare overpayments were domestic support obligations under 11 U.S.C. § 507(a)(1)(B). *In Re Schauer*, B.R. 430 (Bankr. E.D. Wis. 2008). A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of 11 U.S.C. does not discharge an individual debtor from any debt for a domestic support obligation. 11 U.S.C. § 523a.

In this case the petitioner was overpaid BC Plus benefits. BC Plus benefits are public assistance benefits akin to FoodShare and Childcare benefits. Although the petitioner may have attempted to discharge these debts with her bankruptcy, the fact remains that this is a non-dischargeable debt under a bankruptcy. The

petitioner does not dispute that the Department followed the proper steps before issue the Order to Compel. Regardless, I reviewed the documents submitted by the Department, and find that the Department was correct to issue a July 9, 2015 Order to Compel to the petitioner.

CONCLUSIONS OF LAW

The Department was correct to issue a July 9, 2015 Order to Compel to the petitioner.

THEREFORE, it is ORDERED

That the petition is 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 4th day of September, 2015

\sCorinne Balter
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 September 4, 2015.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability