



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/171122

PRELIMINARY RECITALS

Pursuant to a petition filed December 29, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit (PACU) in regard to Medical Assistance (MA) related benefits, a hearing was held on February 3, 2016, by telephone.

The issue for determination is whether the petitioner was overpaid benefits through Wisconsin SeniorCare, an MA-related program, from May through July, 2015.

There appeared at that time 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: [REDACTED], PARIS agent
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED]
2. The petitioner received Wisconsin SeniorCare benefits (a subset of the Wisconsin MA program) from December 2008 through October 31, 2015. The case was closed effective November 1,

2015. She lived in Wisconsin in 2008, and continued to be a Wisconsin resident until at least October 31, 2014.
3. SeniorCare eligibility is reviewed every year. After the petitioner's SeniorCare eligibility was approved in the fall of 2014, the Department mailed a *SeniorCare Approval Notice* to the petitioner at her [REDACTED], Wisconsin address on November 21, 2014. That Notice reminded her to report any address change to the Department within 10 days of the event.
 4. The petitioner moved to [REDACTED], [REDACTED], no later than March 19, 2015. The [REDACTED] landlord is the petitioner's granddaughter. The petitioner did not immediately pay cash rent to her landlord; instead, she removed newer appliances from her former Wisconsin residence and transferred them to the [REDACTED] property in lieu of rent. She did not report this move to the Department (Wisconsin).
 5. The petitioner filed an MA application in [REDACTED] on March 19, 2016. She declared herself to be a [REDACTED] resident, and listed an address of [REDACTED], [REDACTED] Exhibit 1-C.
 6. The petitioner opened a FoodShare (FS) case through [REDACTED] from May 2015 forward. She used all of her FS benefits during those months at stores in [REDACTED]. See, Exhibit 1-H.
 7. The petitioner used her SeniorCare card to obtain prescriptions in Wisconsin in May (\$6,644.68), June (\$6,876.21), and July (\$6,617.28) 2015. Wisconsin SeniorCare did not pay for the petitioner's prescriptions from August 2015 onward.
 8. On November 24, 2015, the Department mailed a *SeniorCare Overpayment Notice (Notice)* to the petitioner at [REDACTED], [REDACTED], [REDACTED]. The Notice advised that the petitioner had been overpaid SeniorCare benefits of \$20,138.17 for the May 1, 2015 through October 31, 2015 period.

DISCUSSION

SeniorCare is a form of a Medicaid (MA) benefit, and is unique to Wisconsin. Wisconsin DHS is legally required to seek recovery of incorrect SeniorCare payments when a recipient fails to report a move out of state to the program, which in turn gives rise to a SeniorCare overpayment:

DHS 109.62 Recovery of incorrect payments from participants.

(1) The department shall begin recovery action against any SeniorCare participant to whom or on whose behalf an incorrect payment was made resulting from any of the following:

(a) A misstatement or omission of fact by the person supplying information on an application, a request for a new benefit period, or a review of eligibility for SeniorCare benefits.

(b) A check submitted for the program enrollment fee is returned for non-sufficient funds under s. DHS 109.11 (6) (d).

(c) A recipient fails to inform the department, within 10 calendar days of the change, of changes in circumstances that affect eligibility.

(d) A recipient received benefits while an appeal requested under s. DHS 109.63 was pending and the contested decision is upheld.

(2) The amount of recovery may not exceed the amount of the SeniorCare benefits incorrectly provided.

(3) Department records of payment for the period of ineligibility shall be evidence of the amounts paid on behalf of the participant.

(4) The department shall notify the participant or the participant's representative of the period of ineligibility and the amounts incorrectly paid, and shall request arrangement of repayment within a specified period of time.

[emphasis added]

Wis. Admin. Code § DHS 109.62(1)-(4) (2014). See also, *MA Eligibility Handbook*, 22.2.1 and 33.10.2.2, available at <http://www.emhandbooks.wi.gov/meh-ebd/>.

In this case, SeniorCare payments totaling \$20,138.17, were clearly, incorrectly made on the petitioner's behalf from May through July 2015. If the petitioner was not a Wisconsin resident, she was not eligible for SeniorCare during these months. The petitioner now argues that she split her time between Wisconsin and ██████████ during the January through November 2015 period, with the majority of her time being spent living in Wisconsin from January into August 2015. The petitioner's contention was not credible. Also, the petitioner acknowledges that she did not report an address change to the SeniorCare program prior to August 2015.

The petitioner's Wisconsin residence was the subject of a foreclosure action that had begun by March 2015, so it is difficult to document the date that she left the Wisconsin residence. However, the petitioner filed for Medicaid in ██████████, as a resident of that state, on March 19, 2015. She claimed, under the penalty of perjury, that her residence at that time was in ██████████. She continues to live at that address. There was no credible reason advanced as to why the petitioner might be shuttling between residences in ██████████ and Wisconsin. It would appear that the only reasons for the petitioner to return to Wisconsin were to visit a daughter and to use her SeniorCare card at a Wisconsin pharmacy. The petitioner went on to apply for FS in ██████████ in April 2015, and used all of the resulting FS at ██████████ stores.

The petitioner's credibility is not enhanced by her argument that she lied about her residence on the ██████████ Medicaid application. She stated that if she committed fraud against anyone, it was ██████████ rather than Wisconsin. This displays a willingness to conveniently prevaricate to obtain whatever benefit was needed at the moment. It is not persuasive.

Thus, I conclude that the petitioner was not a Wisconsin resident while this overpayment was incurred, and that she did not timely report her address change to Wisconsin SeniorCare. The statutory requirement for overpayment collection has been met, and the overpayment is therefore recoverable.

CONCLUSIONS OF LAW

1. The Department may collect the petitioner's \$20,138.17 SeniorCare overpayment pursuant to Wis. Stat. §49.497(1)(a)2.

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 Madison,
Wisconsin, this 18th day of March, 2016

\sNancy J. Gagnon
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 March 18, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability