



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/172076

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 17, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance (MA), a telephone hearing was held on April 06, 2016.

The issue for determination is whether the petitioner was overpaid Medical Assistance during the month of February, 2016.

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]  
Public Assistance Collection Unit  
PO Box 8938  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of NA.
2. The petitioner reported her intended relocation to [REDACTED] in November, 2015, but later updated her information indicating that the move to [REDACTED] did not occur as planned. Her Wisconsin benefits were renewed based upon this information.

3. Petitioner relocated to [REDACTED] in approximately February, 2016.
4. The petitioner's household received \$374.15 in Wisconsin BadgerCare Plus medical assistance benefits in February, 2016.
5. Petitioner did not report to the county agency that she had moved to [REDACTED]

### DISCUSSION

The department may recover any overpayment of medical assistance that occurs because 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 [BadgerCare].
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.

Wis. Stat. § 49.497(1).

“The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made.” Wis. Stat. § 49.497(1)(b).

A person must reside in Wisconsin to be eligible for BadgerCare Plus. BadgerCare Plus Handbook, § 3.1. Residence is based upon “physical presence” and “the person’s intent to maintain Wisconsin residence indefinitely.” Wis. Admin. Code § DHS 103.03(3)(b). “Physical presence” means “living in Wisconsin.” Wis. Admin. Code § DHS 103.03(3)(a)3. “Intent to reside” means that a person “intends that Wisconsin is the person's place of residence and that the person intends to maintain the residence indefinitely.” Wis. Admin. Code § DHS 103.03(3)(a)2.

The petitioner planned to move to [REDACTED] as of approximately January, 2016. She reported this to the county, but her plans subsequently changed or were delayed. In testimony at hearing, petitioner indicated that she was living in Wisconsin through February, but testimony did not reveal the exact date of her relocation to [REDACTED]. Petitioner stated that she did not intentionally omit to inform the agency of her relocation, but I note that she did apply for [REDACTED] benefits in January, 2016. Because she was a BadgerCare Plus recipient throughout the overpayment period, Wis. Stat. § 49.497(1)(b), allows the Department to recover the overpayment from her. As an administrative law judge, I have no equitable powers that would allow me to consider the fairness of the situation; rather, I must follow the law as it is written and uphold the agency’s overpayment finding.

### CONCLUSIONS OF LAW

The petitioner is responsible for an overpayment of BadgerCare Plus that occurred because she received more benefits from the program than she was entitled to as a result of her failure to report her move to [REDACTED]

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 11th day of May, 2016

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\sPeter McCombs  
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 May 11, 2016.

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