STATE OF WISCONSIN

In the Matter of

[redacted]

DECISION

MOP 172382

The attached proposed decision of the Administrative Law Judge dated April 28, 2016, is hereby adopted as the final order of the Department.

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, WI 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 request (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 15 day of June, 20 16.

Thomas J. Engels

Thomas J. Engels, Deputy Secretary
Department of Health Services

FH
1159946213

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[redacted]

PROPOSED DECISION

MOP/172382

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone from Madison, Wisconsin on April 5, 2016.

The issue for determination is whether petitioner should be held liable for the following MA Overpayment Claim: Claim Number [redacted] October 1, 2014 to April 30, 2015; $1,091.09.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Laura Middleton, ESS
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted] is a resident of Dane County, Wisconsin.
2. The County established the following Claim against petitioner for an MA overpayment: Claim Number [redacted] October 1, 2014 to April 30, 2015; $1,091.09. Exhibit A.
3. On February 19, 2014 petitioner applied online for MA via an ACCESS Application; petitioner was having problems with the website and he thought that his MA ACCESS Application did not go through.
4. Petitioner took health insurance through his employer because he thought that he did not have MA.
5. The County sent a letter notice to petitioner dated March 20, 2014 and entitled *About Your Benefits*; that letter notice stated that his MA application was approved and that he must report if his household's total monthly income (before taxes) goes over $972.50; for unknown reasons petitioner never received that letter notice. Exhibit A.
6. Petitioner did not make use of MA (although the monthly capitation fee was still paid by the state).
7. The MA overpayment in *Findings of Fact* #2, above, was established by the County because petitioner did not report when his monthly income went over $972.50; petitioner did not report because he was not aware that he had been approved for MA and was required to report. Exhibit A.

DISCUSSION

An overpayment of MA benefits may be recovered only in the following 3 circumstances:

A. A misstatement or omission of fact by a person supplying information in an application for benefits;

B. The failure of an MA or BadgerCare 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; or,

C. The failure of an MA or BadgerCare 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)(a) (2013-14); See also, *Medicaid Eligibility Handbook* ["MEH"] 22.2.1; BEM/DWS Operations Memo, No: 05-39, Date: 09/29/2005; and, BEM/DWS Operations Memo, No: 06-10, Date: 02/09/2006.

Petitioner testified that he was having problems with the website and thought that his MA ACCESS Application did not go through and that he never received the March 20, 2016 letter notice. His testimony was credible -- especially in light of the fact that he took health insurance through his employer because he thought that he did not have MA.

Petitioner technically had a duty to report his increased income, but did not know that he had that duty because he was not aware that he had been approved for MA and was required to report. Under

circumstances such as these the Secretary of the Wisconsin Department of Health Services ["DHS"] has recently indicated that it may not be appropriate to hold a person liable for an MA overpayment. See, DHS Case No. MOP-167739 (Wis. Div. Hearings & Appeals Proposed Decision September 15, 2015; Final Decision December 11, 2015) (DHS).

This is a *Proposed Decision*. The DHS Secretary will make the Final Decision in this matter.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner should not be held liable for the following MA Overpayment Claim because he was not aware of his MA eligibility and, thus, had no reason to report increased income that would have resulted in MA ineligibility: Claim Number [redacted] October 1, 2014 to April 30, 2015; $1,091.09.

NOW, THEREFORE, it is

ORDERED

That, if this *Proposed Decision* is adopted by the DHS Secretary, this matter be REMANDED to the County, that, within 10 days of the date of this *Decision*, the County take all necessary steps to REVERSE the following Claim that was established against petitioner for an MA overpayment and not take any action to enforce or collect that Claim: Claim Number [redacted] October 1, 2014 to April 30, 2015; $1,091.09.

NOTICE TO RECIPIENTS OF THIS DECISION:
This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Health Services for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 28 day of April, 2016

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals