



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MOP - 174474

PRELIMINARY RECITALS

Pursuant to a petition filed on May 18, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Monroe County Department of Human Services regarding Medical Assistance (MA). The hearing was held on July 5, 2016, by telephone.

The issue for determination is whether the agency correctly determined petitioner's liability for a medical assistance overpayment in the amount of \$1,977.62.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [Redacted]
Monroe County Department of Human Services
Community Services Bldg.
14301 Cty Hwy B, Box 19
Sparta, WI 54656-4509

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Monroe County.
2. Petitioner was informed that she was required to report if household income exceeded \$1,987.50.

3. Her income exceeded that amount and the agency determined that she failed to report it.
4. The agency issued overpayment notices in claim numbers [REDACTED] and [REDACTED] in the amounts of \$1,049.81 and \$927.81 respectively. The overpayment covered the period from March 2015 to February 2016.
5. Petitioner appealed.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any 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.
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.

See also the department's *BC+ Handbook* § 28. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable. *BC+ Handbook* §§ 28.2, 28.3.

At hearing, petitioner did not dispute the fact of an overpayment. She did not dispute the calculations. Petitioner's argument centered on the assertion that any errors were not caused by herself. She stated her challenges in using the online system in the past. Petitioner explained that she was aware that she was required to report any household income exceeded \$1,987.50. Petitioner stated that she did attempt to enter in the changed income and thought she was successful. Petitioner assumed that when she entered in her increased income at one point she assumed her BC+ case had closed or that she was placed on an extension.

In rebuttal, the agency offered that if the change had been successful a new notice would have been generated and sent to petitioner. But, there is no reason to believe that the petitioner would have known to expect such a notice. The agency also argued that if the information had been provided then it would have been entered into the case. But, this position fails to recognize numerous other failures that could occur including computer-related error, or agency personal error.

Petitioner's explanation was persuasive and the suggestion that state and agency systems can be challenging is not without some truth. In the end, the agency did not meet its burden of demonstrating that the petitioner's error caused the overpayment.

CONCLUSIONS OF LAW

The agency failed to meet its burden of showing that the overpayment was caused by client error rather than agency error or computer-related error.

THEREFORE, it is ORDERED

That the matter in remanded to the agency with instructions to reverse the overpayment and cease collection efforts. These actions shall be completed within 10 days.

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, **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 2nd day of August, 2016

\s _____
John P. Tedesco
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 August 2, 2016.

Monroe County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability