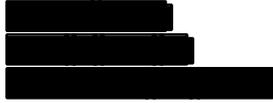




**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION
Case #: MOP - 174866

PRELIMINARY RECITALS

Pursuant to a petition filed on June 7, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on July 12, 2016, by telephone.

The issue for determination is whether petitioner is liable for an overpayment of MA benefits.

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: 
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.

2. Petitioner applied for MA benefits on January 28, 2015. At that time she reported earned income from [REDACTED] and reported that he job at [REDACTED] had ended. On February 6, 2015, petitioner provided employment income verification.
3. Petitioner is sent a notice on February 12, 2016, advising her that she must report if her income exceeds \$980.83.
4. In February, 2015, petitioner begins receiving unemployment compensation, which she does not report to respondent.
5. On December 10, 2015, a FS renewal is completed by phone, and petitioner reports employment with [REDACTED] and [REDACTED]. Income verification is not received prior to December 18, 2016, and on that date respondent mails petitioner a notice advising her that her FS benefits will end as of December 31, 2015.
6. Respondent calculates an MA overpayment based upon historical wage information provided by petitioner's two employers, concluding that petitioner was overpaid \$1,102.53 during the period of April 1, 2015, to June 30, 2015.

DISCUSSION

The Department seeks to recover \$1,102.53 in BadgerCare Plus benefits paid on the petitioner's behalf from April 1, 2015, to June 30, 2015. BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. Adults are ineligible if their household income exceeds the federal poverty level. Wis. Stat. § 49.471(4)(a). The department may recover any overpayment of BadgerCare Plus that occurs because of a "misstatement or omission of fact by a person supplying information in an application..." Wis. Stat. § 49.497(1).

At hearing, the county worker proved with a preponderance of the evidence that an overpayment occurred because petitioner's income was not correctly reported, and therefore not correctly budgeted to determine the household's MA benefits.

At the hearing, petitioner contested that she failed to properly report her income. Rather, she reported that she simply incorrectly assumed that notifying Unemployment workers of her status would suffice to notify her MA workers. The respondent notes that petitioner received written notice of her obligation to report changes to her income, with specific contact information. I can see how the system could be somewhat confusing in this regard, but that does not absolve the petitioner of her obligation to comply with all program rules.

The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant her relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she was overpaid MA benefits and is liable to repay that debt; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

Petitioner was overissued \$1,102.53 of MA benefits which are subject to recovery.

NOW, THEREFORE, it is ORDERED

That the matter herein be and is hereby 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, **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 5th day of August, 2016

\s _____
Peter 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 August 5, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability