



FH



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MOP - 175404

PRELIMINARY RECITALS

Pursuant to a petition filed on July 6, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the [redacted] on County Department of Social Services regarding Medical Assistance (MA), a hearing was held on October 11, 2016, by telephone from Madison, Wisconsin. The record was held open until October 25, 2016, in order to allow the parties to submit written closing statements.

The issue for determination is whether petitioner was overissued MA benefits due to a failure to report that her ex-husband lived with her during the period of July, 2014, through November, 2014, and February, 2015, through June, 2015.

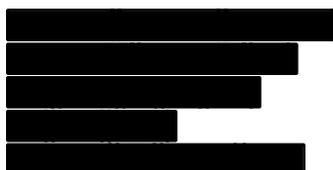
There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [redacted]
[redacted] on County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED] on County.
2. Petitioner received MA for herself in [REDACTED] on County during at least the period of July, 2014, through November, 2014. Petitioner received MA for her minor child, VS, Jr, in [REDACTED] on County during at least the period of February, 2015, through June, 2015. In June of 2015, the county began an investigation concerning the residence of the child's father, VS. After the investigation the county concluded that the father (petitioner's ex-husband) lived with petitioner and their son at his [REDACTED] residence during the referenced time period. After obtaining his income information, the county informed petitioner by notice dated June 13, 2016, that she was overpaid \$1,712.45 in MA from July, 2014, through November, 2014, claim no. [REDACTED] (adult MA). A second notice indicated that she was additionally liable for an MA overpayment of \$484.41 pertaining to February, 2015, through June, 2015, claim no. [REDACTED] (child MA).
3. Petitioner was divorced in November 2014. The parties separated in August of 2013, following a domestic abuse incident. The petitioner had a domestic abuse injunction imposed on VS from August, 2013, through October, 2013. Petitioner reported her separation, and later her divorce, to the respondent.
4. VS, Jr, was enrolled in daycare in [REDACTED] until some time in late 2014, at which time VS, Jr, was enrolled in daycare in [REDACTED]. Since [REDACTED] is located approximately one hour from [REDACTED], petitioner would spend the night at her former in-law's home occasionally. On those occasions, she would drop off her son with VS in the morning, and VS would take him to daycare at noon. Petitioner would then pick him up at 6:00 pm.
5. At all times relevant hereto, petitioner resided in a home owned by her parents located in [REDACTED], Wisconsin, and worked in [REDACTED]; VS has resided at a residence owned by his mother (she does not reside there) in [REDACTED], and since 2005, VS has been employed by [REDACTED]. The [REDACTED] has locations in [REDACTED] Wisconsin, and [REDACTED] Wisconsin.

**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.
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 agency contends that the petitioner owes a total of \$2,196.86 in overissued MA benefits because Petitioner failed to report that she was residing with VS, and failed to report VS's income. BadgerCare Plus overpayments can be recovered from a child's parent. *BadgerCare Plus Handbook*, § 29.4.4.

BadgerCare Plus is Wisconsin's MA program for those who are not elderly or disabled. Benefits depend upon a household's size and countable income. Premiums have to be paid for children when the household's income exceeds 200% of the federal poverty level. The amount of the premium increases as income rises. Income includes all income received by family members. Wis. Stat. § 49.471(1)(f).

The respondent asserts that it commenced its investigation after questioning petitioner's commute to [REDACTED] (a one hour drive from [REDACTED] each way) for daycare. An investigation was performed by KK of O'Brien and Associates. He testified that two of VS, Jr's daycare workers, as well as VS's neighbor confirmed that petitioner and VS live together in [REDACTED]. KK's investigative report included vehicle registration information that indicated that petitioner's vehicle is registered at her [REDACTED] address, and VS's vehicles are registered under his [REDACTED] address.

The respondent also presented testimony from VS, Jr's daycare providers. BH, administrator of the daycare, testified that she told KK that petitioner and VS resided in [REDACTED], but on cross examination conceded that she could not provide specific dates that she saw petitioner and VS as VS's home, but added that she saw them regularly. The other daycare worker, AS, testified that she was petitioner's car parked at VS's home at least once per week.

VS's neighbor, who purportedly stated that petitioner and VS had lived together for two years was not called as a witness. The Wisconsin Supreme Court has held that uncorroborated hearsay does not constitute substantial evidence upon which to base a finding of fact. *Gehin v. Wisconsin Group Ins. Bd.*, 2005 WI 16, ¶¶ 53-56 & 58, 278 Wis. 2d 111, 692 N.W.2d 572; See also, *Williams v. Housing Auth. of City of Milwaukee*, 2010 WI App 14, ¶¶ 14 & 19, 323 Wis. 2d 179, 187 & 189, 779 N.W.2d 185 ("[u]ncorroborated hearsay evidence, even if admissible, does not by itself constitute substantial evidence."). In these circumstances the Wisconsin Supreme Court has held that hearsay must be corroborated by nonhearsay evidence. *Gehin*, ¶¶ 82 & 92. An ALJ does not have discretion to disregard it. Arguably, the hearsay evidence of VS's neighbor could be construed to be corroborated by VS, Jr's daycare providers. However, I find the testimony by BH and AS to be weak at best, and neither of them testified to the length of time or even a specific time period during which petitioner was allegedly residing with VS.

Petitioner presented testimony of her mother, who stated that petitioner and her son reside in [REDACTED], and rent the lower level of her residence from her. She confirmed that VS resided there as well, until the August, 2013, domestic abuse incident. Petitioner testified that she and VS moved to her mother's home in 2009, when they lost their home to foreclosure. She stated that her inconvenient daycare situation is the result of attempts by her and VS to successfully co-parent their child. VS, Jr, was attending daycare in Wausau, but that ended when petitioner lost her job. She stated that her mother watched her child for a while, but she needed to find a new daycare when her mother obtained new employment. When she had difficulty locating a daycare near her residence, she decided to enroll her son in daycare in [REDACTED].

While I can understand that respondent questioning the living situation in light of the distances involved here, I cannot conclude that the determination that petitioner and VS resided together from July, 2014, through November, 2014, and from February, 2015, through June, 2015, is correct. The evidence presented by the respondent presents more questions than it answers, and I found petitioner's testimony to be both credible and consistent. Petitioner's mailing address identified the [REDACTED] address and VS's mailing address identified the [REDACTED] address throughout the overpayment period. This is noted in the respondent's own records, as well as records obtained from the Department of Motor Vehicles and Marathon Circuit Court. The portions of the investigative report evidence that are not hearsay do not establish anything more than the fact that petitioner is often at the home of VS. Neither of the interviewed daycare workers testified that they were ever in VS's home; only that they saw petitioner at VS's home,

walking the dogs, or parking her vehicle there. This corroborates petitioner's testimony that she would occasionally stay at her in-law's home, and drop her son at VS's home in the morning. Based upon the record before me, I am unable to conclude that the respondent has established by a preponderance of the evidence, that petitioner and VS resided together between July, 2014 and January, 2014, through November, 2014, and from February, 2015, through June, 2015.

### **CONCLUSIONS OF LAW**

The respondent has not established by a preponderance of the evidence, that petitioner and VS resided together between July, 2014, through November, 2014, and from February, 2015, through June, 2015. As such, the respondent has not established that petitioner was overissued MA benefits during said time periods.

**THEREFORE, it is ORDERED**

That this matter shall be remanded to the respondent to rescind overpayment claim nos. [REDACTED] and [REDACTED], within 10 days following issuance of this Decision.

### **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 26th day of October, 2016

\s \_\_\_\_\_  
Peter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on October 26, 2016.

Marathon County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
Attorney [REDACTED]  
Attorney [REDACTED]