



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MOP - 175853

PRELIMINARY RECITALS

Pursuant to a petition filed on July 27, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Shawano County Department of Social Services regarding Medical Assistance (MA), a hearing was held on September 14, 2016, by telephone from Madison, Wisconsin.

The issue for determination is whether the petitioner is liable for an overpayment of Medical Assistance.

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]

Shawano County Department of Social Services
607 E. Elizabeth Street
Shawano, WI 54166-3105

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Shawano County.
2. The respondent sent petitioner a notice on February 17, 2014, stating that all household members were receiving healthcare. The notice required that petitioner notify the respondent if household income exceeded \$2,664.17.

3. The respondent determined that petitioner’s household income exceeded \$2,664.17 in April of 2014. The household adults’ coverage ended in July 2014, due to income exceeding program limits. Following a change in income, the household adults’ coverage began again in February 2015. Subsequently, petitioner’s household income increased again, and coverage for the adults ended again in July, 2015.
4. On September 12, 2014, the respondent sent petitioner written notice concerning the children’s MA benefits, which informed them of their duty to report income exceeding \$5,088.56. Household income exceeded this amount in September, 2014, which would have needed to be reported by October, 10, 2014, and would have impacted November, 2014, benefits. Household income then dropped in December, 2014. Written notice was subsequently mailed on July, 13, 2015, which informed them of their duty to report income exceeding \$5,428.24. Household income exceeded this amount in July, 2015, which would have needed to be reported by August, 10, 2015, and would have impacted September, 2015, benefits
5. On July 11, 2016, the county sent petitioner notices informing her that she was overpaid MA as follows:

Claim No. [REDACTED]	6/1/2014 – 7/31/2014	\$332.29
Claim No. [REDACTED]	9/1/2015 – 11/30/2015	\$647.16
Claim No. [REDACTED]	11/1/2014 – 11/30/2014	\$294.28

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:...

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.

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

An overpayment is determined as follows: “If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount.” Handbook, App. 28.4.2.

Although I am sympathetic to petitioner’s situation, I must uphold the overpayment. Petitioner applied for health care, and the agency notified petitioner that her application was being processed and approved for all members of petitioner’s household. Petitioner contends that she was informed verbally that she and her husband would not be eligible unless petitioner was pregnant; therefore they assumed that they were not eligible and did not notice that their written notices identified them as MA recipients, in addition to their children. Petitioner noted that the family never used this insurance, and the respondent confirms that the overpayment consists solely of capitation payments that were paid on petitioner’s behalf. I do not doubt that petitioner’s testimony was truthful that she did not read the MA notices correctly to ascertain that she and her husband were covered under MA, but I cannot blame that on the agency.

The failure to report changes to income does not have to be intentional or fraudulent. Because petitioner did not realize her BC+ eligibility, she mistakenly did not know that she became eligible and that she needed to report the increase in income. The result, however, mistaken, was that the state MA program paid almost \$1,300.00 in Medical Assistance benefits on petitioner's behalf for which petitioner and her family was ineligible. Under the clear language of the statute, the agency is obligated to seek recovery of those payments.

CONCLUSIONS OF LAW

The agency correctly seeks recovery of an MA overpayment because petitioner did not report an increase in income after she was determined to be eligible for BC+.

THEREFORE, it is ORDERED

That the petition for review 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 25th day of October, 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 October 25, 2016.

Shawano County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability