



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 204371

PRELIMINARY RECITALS

Pursuant to a petition filed on February 3, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit regarding Medical Assistance (MA), a hearing was held on March 23, 2022, by telephone.

The issue for determination is whether the agency correctly determined two claims of MA overpayment due to petitioner no longer residing in Wisconsin after 8/18/20.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: K. Smith
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner was enrolled in Wisconsin BC+ for herself and two children.

3. On 6/23/20 petitioner was sent a notice from the agency informing her of her obligation to report a new address to the agency within 10 days.
4. Petitioner applied for public benefits, including MA, in the state of Kentucky on 8/18/20 for herself and two children.
5. Kentucky benefits continued for the group through at least April 2021. During this time petitioner was also receiving SNAP benefits in both states.
6. On 1/12/22 the agency mailed MA overpayment notices to petitioner in claims ██████████ in the amount of \$719.91, and ██████████ in the amount of 996.34. The claims cover the period from 10/1/20 to 12/31/20.

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+ Eligibility Handbook* at § 28.2 & 28.3. To be recoverable, the overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The Wisconsin administrative code, § DHS 102.01(2)(a), states that "application for Wisconsin MA shall not be accepted for a person residing outside Wisconsin." This is consistent with the general policy for public benefits that a person must be a resident of Wisconsin in order to receive MA benefits. The *BadgerCare Plus Eligibility Handbook* contains several relevant policies about the program. First, it states that MA is limited to Wisconsin residents. *BadgerCare Plus Eligibility Handbook* at Section 3.1. *The Handbook* states that to be a resident the person must meet the following two requirements:

1. Be physically present in Wisconsin. (There is no minimum requirement for the length of time the person has been physically present in Wisconsin.) and
2. Express intent to reside in Wisconsin.

BadgerCare Plus Eligibility Handbook, § 3.1.

Concerning absences from Wisconsin, it states:

Once established, Wisconsin residency is retained until:

1. The person notifies the IM agency that they no longer intend to reside in Wisconsin,
2. Another state determines the person is a resident in that state for Medicaid/Medical Assistance,
3. Other information is provided that indicates the person is no longer a resident.

BadgerCare Plus Eligibility Handbook, § 3.5.

Finally, the *Handbook*, § 3.5.1, states that “[t]emporary absence ends when another state determines the person is a resident there for Medicaid/Medical Assistance purposes.”

In this case, petitioner was enrolled in BC+. She applied for MA in Kentucky on 8/18/20 and benefits were granted. The FS EBT transaction history demonstrates that the petitioner’s physical EBT card was swiped in and around the [REDACTED], KY area from September 2020 onward. This is sufficient for me to conclude that petitioner was physically present in KY and was no longer a Wisconsin resident after 8/18/20. Petitioner’s suggestion that the FS number was used by another person in KY by manual entry is belied by the transaction records showing magnetic card swipes. From the time petitioner was found eligible for Kentucky benefits she was no longer a Wisconsin resident and was no longer eligible for Wisconsin MA. The change should have been reported within 10 days and would have resulted in her no longer receiving any BC+ benefits after September 30, 2020. Any benefits paid out or capitation payments thereafter, until some date when eligibility is redetermined after a new application, are an overpayment.

Petitioner offered rebuttal that was vague and unpersuasive. Petitioner also offered no corroboration of any of her statements. She seemed to be suggesting that she did not apply for Kentucky benefits and that she is the victim of identity theft. Petitioner suggests that she was not actually present in Kentucky but merely to pick up one of her children who was with his father. This is not consistent with all the Wisconsin FS EBT card usage of her own card, or the application for public benefits in a new state in her name and her children’s names. Furthermore, petitioner stated that she was staying in a shelter in [REDACTED] in late 2020 through June 2021. However, petitioner failed to provide any proof that she lived and was present there during this time frame. This ALJ held the record open for 10 days to allow petitioner to send in such proof. None was ever received.

The agency has the stronger case. That is what the law requires in order for it to meet its burden. On this record, and without any material rebuttal from petitioner the agency prevails.

CONCLUSIONS OF LAW

The agency was correct in in determination of the MA overpayment claims.

THEREFORE, it is ORDERED

That this appeal is 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, 4822 Madison Yards Way, 5th Floor North, 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).

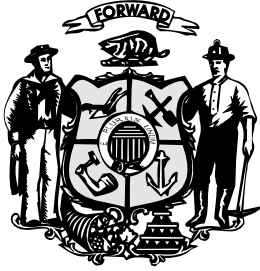
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of May, 2022



\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 May 2, 2022.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability

