



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MAC - 206795

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**PRELIMINARY RECITALS**

The petitioner filed a petition on November 8, 2022, under Wis. Stat. § 49.497(1m)(a), to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA). The petitioner failed to appear for the hearing on December 20, 2022. He later contacted the Division of Hearings and Appeals to request the hearing be rescheduled. That request was granted, and the hearing was ultimately held by telephone on January 5, 2023.

The issue for determination is whether the respondent correctly issued petitioner the October 9, 2022, Order to Compel Payment of MA/BCP liability.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent:**

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

**By:**

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Jason M. Grace  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County who previously received BadgerCare Plus (BCP) benefits.
2. On February 16, 2022, the Division of Hearings and Appeals (DHA) issued a decision in Case No. 203686 addressing whether the agency established that it correctly pursued an October 6, 2021, Order to Compel Payment of Liability regarding an MA/BCP overpayment of \$1,530.00 against petitioner. The administrative law judge (ALJ) found that the agency failed to establish that it issued an overpayment notice and repayment agreement to petitioner's correct address. Accordingly, the ALJ found that the grounds for the agency to seek the October 6, 2021, Order to Compel Payment of Liability had not been met. As such, the ALJ remanded the matter back to the agency to rescind the October 6, 2021 Order to Compel Payment. Of note, the ALJ indicated the following:

While nothing in this Decision precludes the agency from pursuing future collection actions regarding the underlying debt, any such actions would be best served following the issuance to petitioner of new overpayment notices with appeal rights included, repayment agreements, and dunning notices.

Exhibit R-5.

3. Following that decision, the agency issued a Wisconsin MA and BCP Overpayment Notice to petitioner on or about February 18, 2022. It informed petitioner that he received an overpayment of \$1,530.00. This was the same BCP overpayment involved in the prior hearing. The February 18, 2022 overpayment notice provided the following information as to the right and process to request a hearing:

### **Right to a Hearing**

You have the right to request a fair hearing if you believe the agency's decision that you received a Medicaid/BadgerCare Plus overpayment is wrong or if you disagree with the amount of the overpayment. You will get an Enrollment Letter that explains your hearing rights and how to appeal. The letter will explain that you may request a hearing orally or in writing, within 45 days of the date of the letter. You may be represented at a hearing by anyone you choose.

Exhibit R-6.

4. The letter referenced in the Right to a Hearing section of the February 18, 2022 overpayment notice was not later sent to the petitioner explaining how to file an appeal.
5. On March 8, 2022, the agency sent petitioner an MA/BCP Repayment Agreement for the \$1,530.00 overpayment. Exhibit P-4.
6. Dunning notices regarding the \$1,530.00 overpayment was mailed to petitioner on July 6, 2022; August 5, 2022; and September 5, 2022. Exhibits R-7, R-8, and R-9.
7. On October 9, 2022, the agency issued an Order to Compel Payment of Liability regarding the \$1,530.00 MA/BCP overpayment. The notice provided the following information regarding the right and process to file an appeal:

You have the right to request a fair hearing if you believe the agency's decision that you received a Medicaid/BadgerCare Plus overpayment is wrong or if you disagree with the amount of the overpayment. You will get an Enrollment Letter that explains your hearing rights and how to appeal. The letter will explain that you may request a hearing orally or in writing, within 45 days of

the date of the letter. You may be represented at a hearing by anyone you choose. This order may be appealed as a contested case in accordance with s. 49.497(1m)(a) Wis. Stats. The appeal must be received at the Division of Hearings and Appeals, P.O. Box 7875, Madison, Wisconsin 53707, no later than 30 days from the date of the notice. If you do not appeal by this deadline, this Order will take effect immediately and any unpaid amount will result in a circuit court judgement against you.

Exhibit R-10.

8. On November 8, 2022, petitioner filed an appeal.

### DISCUSSION

State statute provides that if an individual fails to enter into or adhere to a repayment agreement after the agency provides notice of a MA/BCP overpayment, the individual may be subject to an order to compel payment of that liability:

49.497(1m)(a) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.

Wis. Stat. §49.497(1m)(a).

The agency has the burden of proof in this matter. To prevail at an appeal regarding an Order to Compel Payment of MA/BCP Liability, the agency must typically offer at least the following: (1) evidence that it provided petitioner proper notice of the overpayment (e.g., Overpayment Notice), (2) evidence that it advised petitioner that s/he is liable to repay the overpayment and provided instructions for how to make payment or enter into a repayment agreement (e.g., Repayment Agreement), and (3) evidence showing that petitioner has not repaid the overpayment in full or complied with terms of a repayment plan.

In this case, it was not shown that the agency issued a proper notice of overpayment following the prior administrative hearing. This is because the February 18, 2022, Notice did not describe how to request a hearing. Specifically, it did not indicate where the request was to be sent to secure the hearing right.

According to Wis. Admin. Code, HA 3.04, an agency is required to inform a person of their right to request a hearing and the *procedures* for requesting that hearing. Consistent with that requirement, both the BadgerCare Plus Handbook and Medicaid Eligibility Handbook indicate that in order for a notice of adverse action to be “adequate,” it must include “[a]n explanation of the right to a fair hearing and *how to request one[.]*” See Medicaid Eligibility Handbook, 23.1.4 and BadgerCare Plus Handbook, 29.1.4 (*emphasis added*).

The record does not indicate that the respondent issued a proper notice of overpayment following the prior administrative hearing. Accordingly, I do not have the grounds necessary to conclude that the

respondent met its statutory obligations in pursuit of the October 9, 2022 Order to Compel Payment of Liability. As such, I will remand this matter back to the agency to rescind that notice.

As was indicated in the decision from the prior hearing, nothing in this Decision precludes the agency from pursuing future collection actions regarding the underlying debt. Any such action would be best served following the issuance to petitioner of new overpayment notices with proper appeal rights included, repayment agreements, and dunning notices.

Finally, petitioner indicated he felt he was being harassed by receiving so many notices from the agency. The agency is required to issue the notices described above before it can pursue further collection efforts. Such a process largely is viewed as a way of protecting the person the agency has found to be liable for the overpayment.

### CONCLUSIONS OF LAW

The respondent did not establish that it properly issued the October 9, 2022, Order to Compel Payment of MA/BCP liability.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the agency to rescind the October 9, 2022, Notice of Administrative Action: Order to Compel Payment of Liability. The agency shall comply with this order within ten days of the date 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, 4822 Madison Yards Way, 5<sup>th</sup> 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**

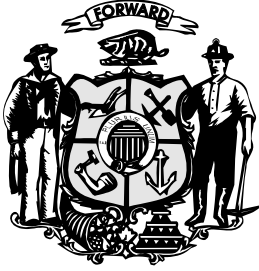
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 8th day of February, 2023

A handwritten signature in blue ink, appearing to read 'JMG', is written above a horizontal line.

\s \_\_\_\_\_  
Jason M. Grace  
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 February 8, 2023.

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