



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MAC - 206913

PRELIMINARY RECITALS

Pursuant to a petition filed on November 16, 2022, under Wis. Stat. § 49.497(1m)(a), to review an Order to Compel Payment of Liability that Grant County Department of Social Services issued regarding an outstanding Medical Assistance (MA) / BadgerCare Plus (BCP) overpayment claim, a hearing was held on December 21, 2022, via teleconference initiated from Madison, Wisconsin. At hearing, petitioner clarified that she was seeking a review of the agency's overpayment determination in addition to the Order to Compel Payment of Liability. Accordingly, a companion case (DHA Case No. MOP-207534) was opened regarding her appeal as to the overpayment.

The issue for determination is whether the agency correctly seeks an order to compel Petitioner to repay an overpayment of Medical Assistance / BadgerCare Plus benefits.

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: [REDACTED]
Grant County Department of Social Services
8820 Hwys 35 and 61 South
PO Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:
Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Grant County who received BadgerCare Plus benefits from October 2016 through June 2017.
2. Since approximately October 2018, Petitioner has resided at [REDACTED]
3. On July 15, 2019, the agency mailed Petitioner a computer system-generated Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice. The notice stated that she had been overpaid \$1,009.11 for the time period April 2017 through June 2017, that she could request a fair hearing with the Division of Hearings and Appeals if she believed the overpayment determination was wrong, and that the deadline to do so was August 29, 2019.
4. On August 2, 2019, the agency mailed a Medical Assistance / BadgerCare / BadgerCare Plus Repayment Agreement to Petitioner which stated that she must repay \$1,009.11 or submit a signed repayment agreement by August 25, 2019.
5. On September 4, 2019, the agency sent Petitioner a dunning letter (i.e., reminder of her obligation to repay the overpayment claim or to submit a signed repayment agreement) and the potential consequences for failing to do so.
6. Between July 2019 and September 11, 2019, overpayment-related correspondence that had been sent to Petitioner was returned to the agency three times. Each time, the agency searched for an updated address and then resent the information.
7. On September 11, 2019, the agency obtained Petitioner's correct mailing address ([REDACTED]) and re-sent overpayment-related correspondence to her at that address. It was not returned.
8. On October 2, 2019 and November 4, 2019, the agency sent Petitioner two additional dunning letters to her correct mailing address. Those letters were not returned.
9. Petitioner did not return a repayment agreement and has not made any payments towards the overpayment claim.
10. On November 3, 2022, the Public Assistance Collection Section (PACS) mailed Petitioner a Notice of Administrative Action and Order to Compel Payment of Liability regarding the past due \$1,009.11 overpayment claim.
11. On November 16, 2022, Petitioner filed a request for fair hearing with the Division of Hearings and Appeals.

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 Medical Assistance/BadgerCare Plus (MA/BCP) overpayment, the individual may be subject to an order to compel payment of that liability (i.e., the overpaid benefits):

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.* [Emphasis added.]

Wis. Stat. §49.497(1m)(a).

It is undisputed that Petitioner has made no payments towards the outstanding claim and, as detailed in the companion case (MOP- 207534), the agency correctly determined that Petitioner was overpaid. However, there was insufficient evidence in the hearing record to establish that “notice that an incorrect payment [i.e., an overpayment notice] was made” prior to the issuance of the Order to Compel Payment of Liability. Although it is clear that the agency made concerted efforts to forward overpayment-related correspondence to Petitioner, it is not clear whether an overpayment notice including a description of appeal rights was ever sent to Petitioner at her current mailing address. By the time the overpayment claim was established in July 2019, Petitioner no longer had an open benefit case, according to the agency, and the last address Petitioner had provided while her case was open was no longer accurate. The agency’s July 2019 – September 2019 case comments detail the difficulties the agency had in locating an accurate mailing address:

- July 24, 2019 -- “received returned mail containing overpayment packet”.
- July 30, 2019 -- “received returned mail. Overpayment notice from 7/15/19 addressed to [REDACTED] . . Found new address in KIDS of [REDACTED] Sent notice to new address.”
- August 19, 2019 – “re-mailed the OP agreement to corrected last four of zip code as updated on return mail”
- September 11, 2019 – “Received returned mail from an overpayment (PACU). Found potential new address of [REDACTED] Updated and mailed letter to this address.” .

The address listed in that final case note, [REDACTED], was Petitioner’s correct mailing address. So, it is clear that on that date, the agency mailed Petitioner some item(s) of correspondence related to the overpayment to her correct mailing address. The note does not specify which of the many items of overpayment-related correspondence that had been issued by that date it was. Though the agency representative believed all of the overpayment related documentation was resent on that date, Petitioner denied receiving any of it and testified that the owner of the motel where she resides does not reliably our routinely deliver the mail.

Based on the evidence, I am simply not sure whether the July 15, 2019 overpayment notice with appeal rights was mailed to Petitioner at her correct mailing address. In light of that uncertainty and Petitioner’s denial of receipt, and because she had no open benefit case (and thus no obligation or reason to ensure the agency had a reliable mailing address) as of the date of the overpayment notice, I am remanding this matter to the agency with instructions to rescind the Order to Compel Payment of Liability.

Petitioner is advised that the agency maintains the right to pursue repayment of the overpaid BCP benefits and may choose to begin the collection process again at any time by sending a repayment agreement and affording her the opportunity to enter into a repayment plan or otherwise satisfy the claim. If Petitioner fails to do so, the agency may re-issue an Order to Compel Payment of Liability and take other collection actions in the future.

CONCLUSIONS OF LAW

Because the record was not sufficient to establish that notice of incorrect payment was made to Petitioner at her correct mailing address prior to the issuance of the Order to Compel Payment, the agency must rescind that Order to Compel Payment.

THEREFORE, it is **ORDERED**

That the matter is remanded to the agency to rescind the November 3, 2022 Order to Compel Payment of Liability. The agency shall do so 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, 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

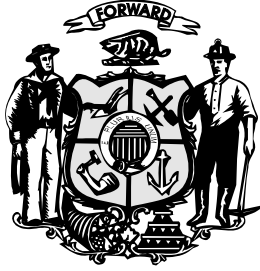
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 31st day of January, 2023



\s _____
Teresa A. Perez
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 January 31, 2023.

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