



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION
Case #: MTI - 208493

PRELIMINARY RECITALS

Pursuant to a petition filed May 1, 2023, under Wis. Stats., §§49.45(5) and 49.85(4), to review a decision by the Dane County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on July 12, 2023, by telephone.

The issues for determination are (1) whether a hearing can be held on the merits, and (2) if so, whether the agency correctly determined an MA overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Megan Thurston
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Juneau County. She received BadgerCare Plus (BC+) MA and FoodShare as a single person in Dane County in 2015 and 2016.
2. On February 17, 2016, the agency sent petitioner a notice informing her (1) that there have been no changes to the Health Care benefit, and (2) that FoodShare would be ending March 1, 2016.

The notice went on to say that FoodShare was ending because three months limited benefits were ending.

3. BC+ continued, with the primary expense being monthly HMO premiums (capitation fees). Petitioner, however, thought that her entire case was closed.
4. Petitioner began to work for the [REDACTED] in March, 2016. Her income went over the BC+ limit that month, but she did not report to the county agency because she thought her case was closed. Had she reported, BC+ would have ended May 1, 2016.
5. That summer petitioner moved from [REDACTED] to [REDACTED]. She did not report the move to the agency, again because she thought the case was closed.
6. BC+ closed effective February 1, 2017 because the agency discovered the income in a state wage match.
7. Later in 2017 Ms. Thurston investigated a possible MA overpayment. She obtained petitioner's income information from the employer. She determined that MA payments made between May 1, 2016 and January 31, 2017 were overpayments resulting from petitioner's failure to report the income.
8. On August 18, 2017, Ms. Thurston sent a "manual" overpayment notice to petitioner at her [REDACTED] address, which she obtained from the employment records, saying that she was overpaid \$3,006.41 in MA in 2016 and 2017, claim no. [REDACTED]. Although the notice mentioned that petitioner could appeal, the notice stated that details on how to appeal would be sent in a separate letter.
9. On August 21, 2017 the separate, system-generated overpayment was mailed to the [REDACTED] address, which was still showing as petitioner's address within the agency computer system. A repayment agreement and later three dunning notices were sent to the [REDACTED] address. All notices sent to the [REDACTED] address in 2017 and thereafter were returned by the postal service with the notation "moved – no forwarding address."
10. In January, 2023, the Public Assistance Collection Unit (PACU) issued a Notice and Order to Compel payment of the claim. It was sent certified to the [REDACTED] address, and was signed for with an unintelligible signature and date. Petitioner was not the person who signed for it.
11. On April 14, 2023, the PACU sent petitioner a notice that it intended to intercept her state tax refund to recover the claim. That notice was sent to petitioner's current address because she recently had applied for benefits again using that address. Petitioner then filed this appeal.

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.

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, FoodShare, and MA. The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from her state income tax refund and must inform the person that she may appeal the decision by requesting a hearing. Id. at §49.85(3)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The first issue here is whether petitioner had a prior opportunity for a hearing. I conclude that she did not. The only notice of the overpayment that petitioner could have received was the August 18, 2017 manual notice that was sent to the [REDACTED] address. Petitioner testified that she does not remember seeing it, but even if she did, the notice did not inform her how to appeal. The specifics on how to appeal were contained in the August 21 system-generated notice that was sent to an old address and that was returned by the postal service. The Order to Compel also was sent to the old address, and the signature on the certified receipt is unintelligible and looks nothing like petitioner's signature on her appeal letter.

Therefore, I will address the merits, and although petitioner's situation is sympathetic, I have to conclude that she was overpaid, and the overpayment was caused by her error. She mistakenly read the February, 2016 FoodShare closure notice to mean that her entire case was closed, despite it saying that there were no changes to the health care benefits. The "error" of failing to report the income does not have to be intentional. Petitioner failed to report her income because of a mistake in what benefits closed.

Petitioner testified that she remembers calling someone about the job, but it is clear that no call was made to the eligibility agency. In my experience, I have seen cases where the person called the assistance number on the ForwardHealth card to say she no longer needed the assistance, but that is not the correct office to call to report a change for eligibility purposes. At this point I cannot make a finding that petitioner called to report her job, especially since case comments do not note such a call.

I conclude, therefore, that although petitioner did not have a prior opportunity for a hearing and thus I can reach the merits, on the merits I must uphold the overpayment. I cannot conclude that the overpayment resulted from agency error, and thus the agency can take appropriate actions to recover it.

CONCLUSIONS OF LAW

1. Petitioner did not have a prior opportunity for a hearing on the overpayment claim at issue in this appeal.
2. The agency found correctly in 2017 that petitioner was overpaid MA from May 1, 2016 through January 31, 2017 because she erroneously, albeit not intentionally, failed to report income that would have closed her BC+ eligibility.

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, 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

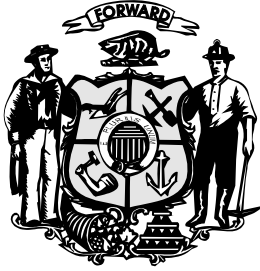
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 14th day of July, 2023



\s _____
Brian C. Schneider
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 July 14, 2023.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability