



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

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In the Matter of

[REDACTED]

DECISION

MED-2/92938

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The proposed decision of the hearing examiner dated September 3, 2008, is modified as follows and, as such, is hereby adopted as the final order of the Department.

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 17, 2008, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Ashland County Dept. of Human Services in regard to medical assistance, a hearing was held on July 25, 2008, at Ashland, Wisconsin. Hearings scheduled for May 21 and June 19, 2008, were rescheduled at the petitioner's request.

The issue for determination is whether the petitioner must repay an alleged overpayment of medical assistance.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Wisconsin Department of Health Services  
1 West Wilson Street, Room 650  
P.O. Box 7850  
Madison, WI 53707-7850

By: Traci Newhouse, ESS  
Ashland County Dept Of Human Services  
630 Sanborn Avenue  
Ashland, WI 54806

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) resides in Ashland County.
2. The petitioner received medical assistance from March 1, 2007, through February 28, 2008.
3. A fundraiser was held for the petitioner, and on July 13, 2007, she deposited \$29,782 into her bank account. She did not report this deposit to the county agency.
4. The county agency seeks to recover \$23,308 in medical assistance benefits provided to the petitioner from September 1, 2007, through February 29, 2008.

### DISCUSSION

The petitioner received medical assistance because she was indigent and disabled with cancer. In the summer of 2007 her community held a fundraiser, and on July 13, 2007, she deposited \$29,782 received from that event into her bank account.

Households with two persons, the size of the petitioner's, cannot have more than \$3,000 in assets and remain eligible. Wis. Stat. § 49.47(2)(b)3m.e. Medical assistance requires recipients to report any financial information that affects eligibility within 10 days. Wis. Adm. Code § 104.02(6). The agency must then give the recipient written notice of its decision to end benefits and not end benefits for at least 10 days from the date of the notice. Wis. Adm. Code § 103.09(4). Medical assistance benefits continue until the last day of the month the person became ineligible. Wis. Adm. Code § HFS 103.09(1). When the petitioner did not report the deposit to the county agency, it determined that she should have been ineligible at the end of August 2007. It did not say how it reached this date, but if the petitioner reported the deposit on July 23, 2007, or 10 days after making it, the agency's 10-day notice to end her benefits would not take effect until August. This means that she would remain eligible regardless of the validity of the agency's claim through August. Her actual eligibility did not end until February 29, 2008, after the agency conducted its annual review. Between September 1, 2007, and February 29, 2008, she received \$23,308 in benefits, which the county agency now seeks to recover.

The Department "may recover" any overpayment of medical assistance that occurs because 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 [BadgerCare].
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.

Wis. Stat. § 49.497(1); *see also*, *Medicaid Eligibility Handbook*, § 22.2.1. When determining the amount of a medical assistance overpayment, agencies must use the actual benefit received by the recipient. *Medicaid Eligibility Handbook*, § 22.2.2.2.

The County was correct to have sought recovery of the overpayment. The petitioner points out that this asset came from a charitable donation rather than regular income. Unfortunately for the petitioner, medical assistance does not exempt assets derived from donations. The donation clearly placed her over the medical assistance asset limit and she admits that she did not report it to the county agency.

However, the Department has the discretion to consider all circumstances when demanding repayment. The ALJs do not possess such equitable powers, but I do. It is not uncommon for the communities to raise funds to help a neighbor's unmet needs. I am aware that recipients more savvy than petitioner have immediately used the donations or had a trust funded, both in ways that did not affect their continuing eligibility. In this way, the community's funds were used as intended—for the recipient's supplemental needs, not to repay Medicaid. I do not excuse petitioner's failure to notify the county about these donations. But, given all of the circumstances, I will exercise my discretion to apply equity and waive recovery of the overpayment.

**CONCLUSIONS OF LAW**

1. The petitioner was overpaid medical assistance benefits because she failed to report assets to the county agency.
2. The Department has the authority to waive this overpayment on equitable grounds.

**NOW, THEREFORE, it is**

**ORDERED**

That this matter shall be REMANDED to the county agency with instructions that within 10 days of the date of this decision it end its attempts to recover the \$23,308 in medical assistance benefits provided to the petitioner from September 1, 2007, through February 29, 2008.

Given  
Madison,  
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under my hand at the City of  
Wisconsin, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2008

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Depart

\_\_\_\_\_  
Mark Thomas, Deputy Secretary  
ment of Health Services