



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

FCP-40/58500

PRELIMINARY RECITALS

Pursuant to a petition filed June 11, 2003, under Wis. Stats. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Milwaukee County Dept. of Human Services and the Office of Strategic Finance (OSF) in regard to Family Care Program (FCP), a hearing was held on October 2, 2003, at Milwaukee, Wisconsin. The record was held open by the ALJ to obtain information from the OSF.

The issue for determination is whether an overissuance of FCP benefits has occurred.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

Legal Action of Wisconsin
230 West Wells Street, Suite 800
Milwaukee, WI 53203

Respondent:

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street
P.O. Box 309
Madison, WI 53707-0309

By: Teresa Smith
Milwaukee County Department on Aging
235 West Galena Street
Milwaukee WI 53212

Administrative Law Judge:
David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. The Petitioner (SSN xxx-xx-xxxx) is a resident of Milwaukee County.
2. The Petitioner was notified that she had been overissued FCP benefits in the amount of \$2346 for the period from February 1, 2003 through July 31, 2003. The overissuance occurred as a result of the Petitioner's failure to pay a monthly cost share in the amount of \$391.00.
3. The Petitioner signed a FCP enrollment agreement in October 2002. She never signed a service plan.

DISCUSSION

It is axiomatic that the burden of proof in an overissuance case rests with the State, county agency and/or their agent.

The Wisconsin Administrative Code provisions governing the Family Care Program provide for recovery of overissuances of FCP benefits:

HFS 10.61 Recovery of incorrectly paid benefits.

County agencies, on behalf of the department, shall recover benefits incorrectly paid under the family care benefit, whether paid on behalf of individuals eligible for medical assistance or not, according to provisions of s. 49.497, Stats., s. HFS 108.03 (3) and policies established by the department or by the department of workforce development. The amount to be recovered is the amount actually paid by a CMO [case management organization] on behalf of a family care enrollee.

The cited statutory provision states:

49.497 Recovery of incorrect medical assistance payments.

(1) The department may recover any payment made incorrectly for benefits specified under s. 49.46, 49.468 or 49.47 if the incorrect payment results from any misstatement or omission of fact by a person supplying information in an application for benefits under s. 49.46, 49.468 or 49.47. The department may also recover if a medical assistance recipient or any other person responsible for giving information on the recipient's behalf fails to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits. The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. The county department under s. 46.215 or 46.22 or the governing body of a federally recognized American Indian tribe administering medical assistance shall begin recovery actions on behalf of the department according to rules promulgated by the department.

Finally, § HFS 108.03, Wis. Adm. Code states that:

3) RECOVERY OF INCORRECT PAYMENTS.

(a) Agencies shall begin recovery action, as provided by statute for civil liabilities, on behalf of the department against any MA recipient to whom or on whose behalf an incorrect payment was made.

(b) The incorrect payment shall have resulted from a misstatement or omission of fact by the person supplying information during an application for MA benefits, or failure by the recipient, or any other person responsible for giving information on the recipient's behalf, to report income or assets in an amount which would affect the recipient's eligibility for benefits.

From the law governing overissuances it is apparent that recovery of incorrectly paid FCP benefits is limited to situations where there is a misstatement or omission of fact or a failure to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits. Even then the amount of recovery is limited to the amount actually paid by a CMO on behalf of a family care enrollee.

The FCP maintains that an overissuance occurred here because the Petitioner was notified that she owned a monthly cost share amount of \$391 and that she did not pay the cost share and never actually disenrolled from the FCP until the end of July 2003. The FCP contends that the Petitioner would ask to disenroll but then change her mind perhaps so she could keep getting services without actually paying for them.

The Petitioner argues that she never agreed to a service plan and that she repeatedly asked to disenroll from the FCP. She also notes that, even if she were found to be liable for an overissuance, the amount of the

overissuance must be limited to the amount actually paid by a CMO on behalf of the Petitioner and that she received few, if any, actual services.

I am not sustaining the recovery here. It is apparent from the CMO's case notes (EXHIBIT # 11) that the Petitioner began to question, and balk at paying, the monthly cost share as early as February 13, 2003 and by early March 2003 began directly asking to be disenrolled from the FCP. These notes also indicate that she renewed that request repeatedly. While the CMO case notes do note that the Petitioner did change her mind on occasion this only seems to have been after she felt she was pressured to remain in the program, she was very persistent in saying that she wanted to disenroll. The CMO notes do confirm indicate that the CMO response was to make further efforts to keep the Petitioner in the FCP. I note that the law does require that:

- (j) *Disenrollment counseling.* The resource center shall provide information and counseling to assist persons in the process of voluntarily or involuntarily disenrolling from a care management organization, including all of the following:
1. Information about clients' rights and grievance procedures.
 2. Advocacy resources available to assist the person in resolving complaints and grievances.
 3. Service and program options available to the person if the disenrollment occurs.
 4. Information about the availability of assistance with re-enrollment.

§ HFS 10.23(2)(j), Wis. Adm. Code.

Additionally, a page from the 2003 contract between the DHFS and the Resource Center indicates that the FCP is supposed to obtain the participant's signature on a disenrollment form if a participant expresses a desire to exit the program. See Exhibit # 6. I realize that the FCP was trying to make absolutely sure that it was not abandoning an individual with needs but there is really no basis for doing this at cost to the Petitioner of \$391 per month.

Finally, the Administrative Code does state that recovery the amount actually paid by a CMO on behalf of a recipient. There is no evidence to suggest what that amount is in this case. It is true that the Petitioner did receive MA that she would not otherwise have been eligible for (her income is about \$1450 per month – well above the \$591.67 income limit) but there is no evidence as to what extent she used that benefit as she is also eligible for Medicare. In the end the FCP has not demonstrated that an overissuance of FCP benefits has occurred in this case.

CONCLUSIONS OF LAW

That the FCP has not demonstrated that an overissuance of FCP benefits has occurred in this case based on the circumstances that were the subject of this hearing

NOW, THEREFORE, it is **ORDERED**

That the matter be remanded to the county agency with instructions to take the administrative steps necessary to rescind efforts to recover an alleged \$ 2346 overissuance of FCP benefits that was the subject of this hearing. The FCP must take these steps within 10 days of the date of this decision.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in §227.49 of the state statutes. A copy of the statutes can found 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 no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Family Care Program must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in §227.53 of the statutes.

Given under my hand at the City of
Milwaukee, Wisconsin, this 10th day of
June, 2004

/sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals
6/5/DDF

cc: Ann Blewett - Milw. CTY - e-mail #9422
Nora Gomez - Milw. Co. - e-mail
Lois Greene For Jackson -Milw. Cty - e-mail
Jenifer Harrison-Metastar - e-mail
April HAYS-DHFS/METASTAR - e-mail
Ruby Email Jackson - e-mail
Charles Jones, OSF/CDSD - e-mail
Chester Kuzminski - Dept On Aging - e-mail
Cheryl McIlquham - BHCE
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Lydia Torres-Community/milw - e-mail
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