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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MOP - 199358

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 10, 2020, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit regarding Medical Assistance (MA), a hearing was held on September 1, 2020, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly seeks to recover an overissuance of BC+ benefits from the Petitioner in the amount of \$30,033.77 for failure to report accurate information regarding marital status, household composition and income, and residency.

There appeared at that time and place 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]  
Public Assistance Collection Unit  
P.O. Box 8938  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 5, 2000, the Petitioner married [REDACTED] [REDACTED]. There is no record that the Petitioner or Ms. [REDACTED] ever reported their marriage to the agency at any time relevant herein.
3. From October 2012 – December 2014, Ms. [REDACTED] reported in FS applications and renewals that she resided at [REDACTED]. However, she reported an address of [REDACTED] on job applications completed in April and December 2014. During that period from October 2012 – December 2014, Ms. [REDACTED] reported on her applications and renewals that she was not married, had a household size of one and had no income.
4. In January 2015, Ms. [REDACTED] obtained employment at [REDACTED]. Due to income exceeding program limits, the agency notified her that her FS benefits would end on April 30, 2015. On April 29, 2015, Ms. [REDACTED] re-applied for benefits and reported her address as [REDACTED]. Her application was denied due to exceeding income limits for a household of one. Her FS case closed effective April 30, 2015.
5. On May 1, 2015, Ms. [REDACTED]'s MA case closed due to income exceeding program limits.
6. On March 24, 2016, Ms. [REDACTED] applied for healthcare benefits. She reported an address of [REDACTED].
7. From March 2013 – September 26, 2015, Ms. [REDACTED]'s address on record with the Wisconsin Department of Transportation was [REDACTED].
8. On August 19, 2013, the Petitioner applied for FS benefits. He reported he was homeless, never married, no income. Notices were issued to a PO Box.
9. On October 29, 2013, January 14, 2014, July 9, 2014, November 18, 2014, January 22, 2015, and July 30, 2015, the Petitioner completed renewals and six-month reviews. He reported he was homeless but provided a residence address of [REDACTED] with a mailing address of [REDACTED]. He reported a household size of one. He reported he was single, never married. He reported no income.
10. On October 27, 2015, the Petitioner updated his driver's license with the Division of Motor Vehicles and reported his address was [REDACTED].
11. On December 2, 2015 and June 10, 2016, the Petitioner called the agency to complete renewals. He reported he was homeless but provided a mailing address of [REDACTED]. He reported he was single, never married. He reported he is a comedian doing sets on the weekend for \$150. He reported this had recently started in the last month and it is not every weekend. The case comments indicate this income was not added to the Petitioner's case because of "inconsistency". Petitioner reported he was not enrolled in school and did not file taxes.
12. On December 19, 2016, the agency issued a notice of decision to the Petitioner at [REDACTED] informing him that his benefits would end effective January 1, 2017 due to failure to complete a renewal. His FS case closed effective December 31, 2016.
13. In or about June 2017, Ms. [REDACTED] moved to Las Vegas. From August 2017 – March 2020, Ms. [REDACTED] worked full-time in Las Vegas.
14. On or about August 9, 2017, Ms. [REDACTED] filed a Chapter 13 bankruptcy petition with the US Bankruptcy Court, Eastern District of Wisconsin. She reported her address as [REDACTED] and reported that she owns the duplex/multi-unit building at [REDACTED]. She reported that she has lived in a community property state (Wisconsin) within the last 8 years and has lived with her non-filing spouse (Petitioner) during that time. She reported

- that she had been employed for the previous 3 months with Adecco USA with monthly gross income of \$2752. She reported that the number of people in her household is two.
15. On August 14, 2017, the Petitioner re-applied at the agency for FS benefits. He reported he was homeless but provided a residence and mailing address at [REDACTED]. He reported he was never married. He reported a household of two, but the other household member was not identified. He reported he does not purchase or prepare meals with the other household member. He reported his self-employment, 90 hours/month.
  16. On December 26, 2017, the Petitioner submitted a Six-Month Report Form (SMRF). He reported no changes in address, marital status, or household composition. He reported no income.
  17. On January 2, 2018, the Petitioner signed a rental agreement with [REDACTED] to lease [REDACTED] [REDACTED] for a term of one year. The agreement is signed by Ms. [REDACTED] as the owner.
  18. In May 2018, the Petitioner posted on his Facebook page that he lives in Las Vegas.
  19. On June 19, 2018, the agency received an out-of-state residency report indicating that the Petitioner may reside in the state of Nevada. It was noted that EBT transaction details show all FS benefits were being spent in Las Vegas. The agency issued a request for verification of Wisconsin residency to the Petitioner with a due date of June 29, 2018. The Petitioner did not provide verification by the due date.
  20. On July 10, 2018, the Petitioner went to the agency to complete a renewal. He reported a household of one. He reported he was single and never married. He reported a residence address of [REDACTED]. He reported self-employment as a comedian. The case was pending for self-employment income and residency verification.
  21. On July 17, 2018, the Petitioner submitted a piece of mail and a lease with no address as verification of Wisconsin residency. He also submitted a SEIRF. The verification was determined to be unacceptable verification by the agency at that time. On July 23, 2018, the agency issued a notice of decision to the Petitioner at [REDACTED] informing him of the requirement to submit verification of self-employment and Wisconsin residency to continue to receive FS benefits.
  22. On August 14, 2018, the Petitioner submitted SEIRFs for June, July and August and a rental agreement. The case was updated. On August 15, 2018, the agency issued a notice of decision to the Petitioner at [REDACTED] informing him that he would receive FS benefits of \$111 for August 2018 and \$192/month effective September 1, 2018.
  23. On August 1, 2018, Ms. [REDACTED] entered into a rental agreement for an apartment in Las Vegas. The agreement notes that there is one tenant. The agreement is signed by Ms. [REDACTED].
  24. On December 24, 2018 and June 25, 2019, the Petitioner submitted a SMRF and a renewal. He reported no changes.
  25. On or about February 1, 2019, Ms. [REDACTED] entered into a month-to-month rental agreement in a mobile home community in Las Vegas. The rental agreement states that the individuals who will occupy the home are Ms. [REDACTED] and her mother. Ms. [REDACTED] also purchased a mobile home for the property. The purchase agreement states the home is owned by Ms. [REDACTED] and her mother. The purchase agreement and the loan agreement that is part of the purchase agreement are signed by Ms. [REDACTED] and her mother.
  26. On July 8, 2019, the agency received an out-of-state residency report that the Petitioner may be residing outside Wisconsin. The case comments indicate that “research reveals no reason to suspect member is Out-of-State per EBT usage, verification in ECF and recent contact with this agency.”

27. On August 22, 2019, the agency received returned mail for the Petitioner and contacted him by phone. The agency worker advised him that it had received returned mail and his FS benefits had been used exclusively in Las Vegas in the last 30 days so Wisconsin residency verification was requested. The Petitioner reported that he works as a comedian in Las Vegas and visits there frequently.
28. On August 23, 2019, the Petitioner provided a WE Energies bill and his Wisconsin driver's license as verification of Wisconsin residency. The agency updated his case with this information.
29. On December 23, 2019, the Petitioner submitted a SMRF. He reported no changes.
30. On February 11, 2020, the agency received an out-of-state residency report for the Petitioner. The case comments state "research reveals no reason to suspect member is out-of-state per EBT usage, verification in ECF (8/2019 WE Energies bill and WI DR) and DE (MV Exchange)."
31. On February 13, 2020, the agency obtained information that the Petitioner had been married to Ms. [REDACTED] since 2000. It further obtained information that Ms. [REDACTED] owned the property that the Petitioner reported as his residence. The agency requested that the Petitioner provide a lease and taxes for 2010-2019. The agency spoke with a resident at the property. She stated that she resided there with a friend and her cousin. She stated that the Petitioner is the landlord, but he does not reside there.
32. On February 13, 2020, the agency requested 2010-2019 tax returns from the Petitioner and Ms. [REDACTED]. The due date for the information was February 27, 2020.
33. On February 26, 2020, the agency issued a notice of decision to the Petitioner at [REDACTED] informing him that he must submit verification of Wisconsin residency by March 1, 2020 to continue to receive FS benefits. No additional verification was provided.
34. On April 7, 2020, the Petitioner registered to vote reporting an address of [REDACTED].
35. The Petitioner's primary address history reported to the Wisconsin Department of Transportation is as follows:
 

October 5, 2013 – June 21, 2014	[REDACTED]
June 21, 2014 – September 21, 2014	[REDACTED]
Sept. 21, 2014 – October 20, 2015	[REDACTED]
Oct. 20, 2015 – October 27, 2015	[REDACTED]
February 26, 2020	[REDACTED]
36. The City of Milwaukee property information lists Ms. [REDACTED] as the owner of [REDACTED]. Her address is listed as [REDACTED]. The property is described as having 2 residential units.
37. On May 1, 2020, the agency sent a letter informing the Petitioner of the FS overpayment with worksheets reflecting the agency's calculation of the overpayment.
38. On May 4, 2020, the agency issued MA/BC+ Overpayment Notices to the Petitioner at [REDACTED] [REDACTED] informing him that the agency intends to recover overissuance of MA/BC+ benefits in the total amount of \$ for the period of February 1, 2014 – February 29, 2020 as follows:

Claim # [REDACTED]	04/01/2014 – 07/31/2014	\$ 212.84
Claim # [REDACTED]	10/01/2014 – 03/31/2015	\$2,261.34
Claim # [REDACTED]	12/01/2014 – 11/30/2015	\$4,282.10
Claim # [REDACTED]	04/01/2015 – 04/30/2015	\$ 367.51
Claim # [REDACTED]	12/01/2015 – 11/30/2016	\$5,274.59
Claim # [REDACTED]	03/01/2016 – 12/31/2016	\$3,634.23
Claim # [REDACTED]	08/01/2016 – 07/31/2019	\$5,583.81
Claim # [REDACTED]	08/01/2017 – 07/31/2018	\$4,940.85
Claim # [REDACTED]	08/01/2019 – 03/31/2020	\$3,476.50

39. On July 10, 2020, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### 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:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
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.

See also the BC+ Handbook, § 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

In this case, the agency contends that the Petitioner failed to provide accurate information in his applications and renewals for benefits and failed to provide requested verification. Specifically, the agency alleges the Petitioner failed to report accurate marital status, household composition, household income, and residency. The agency seeks to recover a full overpayment for all MA/BC+ benefits issued to the Petitioner and to Ms. [REDACTED] for the period of April 1, 2014 – March 31, 2020. The agency contends it is authorized to recover a full overpayment because the Petitioner did not provide accurate information and because the Petitioner and Ms. [REDACTED] did not provide copies of their tax returns to verify their income.

The Petitioner does not dispute that he and Ms. [REDACTED] have been married since July 2000. He testified that they resided together until 2014. Ms. [REDACTED] testified that they resided together until 2012.

## Overpayment Based on Marital Status, Household Composition, and Income

Failing to accurately report marital status is not in itself a basis for recovering MA/BC+ benefits. The agency is authorized to recover benefits if incorrect payments were issued because of the failure to report accurate marital status, household composition or income. In this case, an overpayment is warranted if the Petitioner and Ms. [REDACTED] were residing together and the agency demonstrates that they would not have been eligible for MA/BC+ benefits as a household of two. The burden is on the agency to prove the overpayment exists and is correctly calculated.

Based on the evidence presented, the agency has not demonstrated that the Petitioner and Mr. [REDACTED] were residing together at any time during the overpayment period.

1. [REDACTED]

As noted in Finding of Fact #3, the Petitioner consistently reported her address to the agency as [REDACTED] from October 2012 until at least April 2014. Between April 2014 and March 2016, there is some inconsistency in her reports of living at [REDACTED] and [REDACTED]. See Findings of Fact #3, 4, 6 and 7. However, relevant to this analysis is the fact that there is no evidence to demonstrate that the Petitioner ever resided at [REDACTED] with Ms. [REDACTED].

2. [REDACTED]

This is a duplex/multi-unit building owned by Ms. [REDACTED]. It consists of two separate residential units. There is no evidence that Ms. [REDACTED] ever resided in the [REDACTED] unit. Ms. [REDACTED] testified that she purchased the duplex at [REDACTED] in 2014 and moved into the unit at [REDACTED] in October or November 2014 with her daughter. She testified that she continued to live there until she moved to Las Vegas in 2017.

In October 2015, the Petitioner reported the [REDACTED] unit as his mailing address to the DMV. In December 2015, he reported to the agency that he was homeless but reported the [REDACTED] unit as his mailing address. He continued to report to the agency that he was homeless and [REDACTED] was his mailing address through his renewal in August 2017. In August 2017, he reported [REDACTED] as his address. Mr. [REDACTED] entered into a lease agreement for the [REDACTED] unit in January 2018.

Relevant to this analysis is the fact that there is no evidence presented to demonstrate that Ms. [REDACTED] ever resided at the [REDACTED] unit that the Petitioner reported as his mailing address. The fact that Ms. [REDACTED] owned the unit is not reliable evidence that either Ms. [REDACTED] or the Petitioner were residing in the unit. There is also no reliable evidence presented that the Petitioner resided at the [REDACTED] unit at the same time as Ms. [REDACTED]. There is reliable evidence from Ms. [REDACTED] that she resided in that unit from October or November 2014 until June 2017 but there is no reliable evidence to demonstrate that the Petitioner was residing there. He reported his mailing address to the agency at [REDACTED] until December 2015. He first reported his residence at [REDACTED] in August 2017 after Ms. [REDACTED] had moved to Las Vegas. There was hearsay evidence that the agency investigator spoke with an individual residing at [REDACTED] who stated that the Petitioner does not live there. I do not find this hearsay evidence to be reliable or sufficient to demonstrate whether he was residing at the unit during the overpayment period or whether Ms. [REDACTED] was residing there with him. I do not find the DMV report October 2015 is sufficient to demonstrate that the Petitioner was residing at that address at that time.

The agency presented evidence of a bankruptcy filing in 2017 by Ms. [REDACTED] which asked if she had resided in the previous 8 years in a community property state. She responded that she had resided in Wisconsin and that she had resided with her spouse during that period. I note that this would be the period of 2009 – 2017. Ms. [REDACTED] conceded that she and the Petitioner resided together until sometime in 2012. I do not find her responses in the bankruptcy filing to be inconsistent with the evidence. I do not interpret the bankruptcy petition question to ask if she had continuously lived with her spouse during the previous 8 years but rather whether she had resided with her spouse at any point during the previous 8 years. Thus, I do not find this evidence to be convincing that the Petitioner and Ms. [REDACTED] were residing together during the overpayment period.

### 3. Las Vegas

The agency further contends that the Petitioner and Ms. [REDACTED] lived in Las Vegas together while the Petitioner continued to receive Wisconsin MA/BC+ benefits. The agency asserts that the Petitioner was not entitled to receive Wisconsin MA/BC+ benefits because he was no longer a Wisconsin resident. It argues in the alternative that if he was still a Wisconsin resident, a full overpayment is authorized because he and Ms. [REDACTED] failed to produce tax returns.

I do not find the agency has met its burden to demonstrate that the Petitioner and Ms. [REDACTED] resided together in Las Vegas. The agency submitted Facebook postings and the rental agreement noted in Finding of Fact #25 as evidence that they resided together. I do not find Facebook postings to be reliable evidence as to where either party was residing. As for the rental agreement, the document itself is inconsistent regarding who was living on the premises. On the face sheet, the Petitioner is included as a tenant but on the very next page, the only individuals listed as tenants are Ms. [REDACTED] and her mother. The agreement is signed only by Ms. [REDACTED]. She testified that she entered into the agreement and lived on the premises with her mother. She conceded that the Petitioner was a frequent visitor. She stated that frequent visitors had to be registered with the owner/operator. The Petitioner testified that he stayed at the home of his daughter and her mother when he was in Las Vegas. He concedes that he frequently visits Ms. [REDACTED] and her mother. Other than the one mention of him on the face sheet of the lease, there is no other evidence produced by the agency to demonstrate the Petitioner was residing with Ms. [REDACTED] in Las Vegas.

### **Overpayment Based on Residency**

The BC+ Handbook states as follows regarding the residency requirement for MA/BC+ benefits:

#### 3.1 RESIDENCE

A person must be a Wisconsin resident to be eligible for BadgerCare Plus. He or she must:

- Be physically present in Wisconsin. There is no minimum requirement for the length of time the person has been physically present in Wisconsin. Wisconsin residents who are temporarily out of state (see 3.5 Absence from Wisconsin), including students going to school in another state, do not have to be physically present to apply. However, individuals who are not Wisconsin residents and intend to move to Wisconsin must be physically present in Wisconsin to apply.
- and
- Express intent to reside in Wisconsin. (see 3.2 Intent to Reside.). Effective January 1, 2014, an individual can also be considered a resident of Wisconsin if they are physically present in the State and have entered

Wisconsin with a job commitment or seeking employment, whether or not they are employed at the time of application.

### 3.2 INTENT TO RESIDE

The intent to reside requirement applies to any adult age 18 or older who is capable of indicating intent. . .

“Intent to reside” does not mean an intent to stay permanently or indefinitely in the State, nor does it require an intent to reside at a fixed address.

### 3.5 ABSENCE FROM WISCONSIN

#### 3.5.1 Temporary Absence

Once established, Wisconsin residency is retained until:

- The person notifies the IM agency that he or she no longer intends to reside in Wisconsin.
- Another state determines the person is a resident in that state for Medicaid/Medical Assistance.
- Other information is provided that indicates the person is no longer a resident.

Temporary absence ends when another state determines the person is a resident there for Medicaid/Medical Assistance purposes.

Based on the evidence, I conclude the agency has not presented sufficient evidence to demonstrate that the Petitioner was no longer a Wisconsin resident during the overpayment period. There were points during the overpayment period in 2017 and 2018 that the agency questioned the Petitioner’s Wisconsin residency and he produced satisfactory evidence to verify his residency each time. According to case comments, he produced bills from WE Energies and mail addressed to him in Wisconsin. Further, the evidence demonstrates that he had a lease for the apartment in Milwaukee, his driver’s license has a Milwaukee address and he registered to vote in Milwaukee in 2020. At the hearing, he expressed his intent to be and remain a Wisconsin resident. The agency’s evidence consists of the EBT Transaction Detail which shows the Petitioner is out of Wisconsin for significant periods of time beginning in 2016. However, I do not find this is sufficient to allow me to conclude that he was not a Wisconsin resident, especially when the other evidence indicates his intent to remain a Wisconsin resident. There is no evidence that he has been determined to be a resident of Nevada and he testified that when he inquired into applying for benefits in Nevada, he was told he was still a Wisconsin resident and had to continue to receive benefits from Wisconsin. I conclude there is insufficient evidence to conclude that the Petitioner was no longer a Wisconsin resident during the overpayment period.

### **Failure to Produce Tax Returns**

As noted earlier, the burden is on the agency to prove that an overpayment exists. It must use the best evidence available to determine that incorrect payments were issued to the Petitioner. The agency contends that it is authorized to recover a full overpayment because the Petitioner failed to produce tax returns to show his income during the period of the overpayment. I could find no MA regulation that would authorize the agency to take a full overpayment for failure to provide requested verification.

The Petitioner testified that he had not been able to comply because he did not file any tax returns for the years of the overpayment. The agency worker noted that the Petitioner could obtain verification of his



non-filing from the IRS. It is not clear if the agency made a request to the Petitioner to obtain verification of non-filing. I note that all requests for verification must be in writing and any such request was not submitted as an exhibit, so I am unable to ascertain if the request was made.

There was also no evidence that the agency made requests to the Petitioner or Reefa Rides for verification of his income during the overpayment period. There was no evidence that the agency attempted to obtain income verification via The Work Number or state wage records. Without any evidence that the Petitioner's income exceeded program limits, I find the agency did not meet its burden to demonstrate there was an overpayment of benefits.

I note that since I concluded the agency did not meet its burden to demonstrate that the Petitioner and Ms. [REDACTED] were residing together, Ms. [REDACTED]'s tax returns are not relevant. Their tax filing status has no relevance to whether there was an overpayment.

### CONCLUSIONS OF LAW

The agency did not meet its burden to demonstrate there was an overissuance of MA/BC+ benefits to the Petitioner.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to rescind all MA/BC+ overpayment claims as noted in Finding of Fact #38 and to cease all collection actions related to those claims. These actions shall be completed within 10 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, 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.

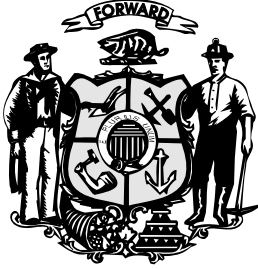
### **APPEAL TO COURT**

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 Milwaukee,  
Wisconsin, this 24th day of September, 2020

\s \_\_\_\_\_  
Debra Bursinger  
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 September 24, 2020.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability