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**DISTRICT I**

April 4, 2023

To:

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Clerk of Circuit Court  
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Anthony Russomanno  
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You are hereby notified that the Court has entered the following opinion and order:

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2021AP1433

Christopher Moss v. Wisconsin Department of Health Services  
(L.C. # 2020CV6786)

Before Donald, P.J., Dugan and White, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Christopher Moss appeals the order of the circuit court affirming the decision of the Wisconsin Department of Health Services (DHS), which found him liable to repay an overpayment of medical assistance (MA) benefits. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. § 809.21(1) (2021-22).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In June 2020, Moss was notified by DHS that he was liable for an overpayment of MA benefits, through BadgerCare Plus (BC+), relating to an MA case for Leila Martinez, with whom Moss shares a son. DHS advised Moss that the overpayment occurred because Moss had “failed to report accurate members of your home” for purposes of determining eligibility. Moss responded that he had never applied for benefits, and that the misinformation must have come from Martinez. He therefore requested a hearing on the matter with DHS.

A hearing was held before an administrative law judge (ALJ) in August 2020. The ALJ acknowledged that Martinez had applied for the MA benefits in March 2013, and that their son, who was born in November 2013, was subsequently included in Martinez’s MA case. The ALJ further found that Moss was never enrolled in that MA case. However, he and Martinez lived in the same home from August 2012 through November 2019. Therefore, Moss’s income should have been included in the household income used for determining eligibility for MA benefits for their son.

The ALJ explained that under the statutes regulating MA benefits, along with the BC+ Eligibility Handbook which assists with the interpretation of the statute, DHS’s right of recovery for the overpayment of MA benefits paid on behalf of a minor child extends to that child’s parents. The ALJ further noted that there is nothing in the statutes or the Wisconsin Administrative Code that would exclude Moss from liability, even though it was Martinez who submitted the misinformation to DHS. Therefore, the ALJ found that DHS was correct to hold Moss liable for the overpayment of MA benefits that were paid during the time Moss and Martinez lived together, which totaled \$7,195.47.

Moss appealed that decision to the circuit court, which affirmed DHS’s decision holding Moss liable for the overpayment. Moss appeals.

On appeal, our review is of the decision of DHS, not the decision of the circuit court.<sup>2</sup> See *Cholvin v. DHFS*, 2008 WI App 127, ¶11, 313 Wis. 2d 749, 758 N.W.2d 118. The petitioner “bears the burden of demonstrating that the agency decision should be modified or set aside.” *Bethards v. DWD*, 2017 WI App 37, ¶16, 376 Wis. 2d 347, 899 N.W.2d 364.

The parties agree that there are no issues of fact here; rather, at issue is the interpretation of the relevant statutes. This court reviews the administrative agency’s interpretation and application of statutes *de novo*. See *Wisconsin Bell, Inc. v. LIRC*, 2018 WI 76, ¶29, 382 Wis. 2d 624, 914 N.W.2d 1. Indeed, statutory interpretation is a question of law that we also review *de novo*. *DOR v. River City Refuse Removal, Inc.*, 2007 WI 27, ¶26, 299 Wis. 2d 561, 729 N.W.2d 396.

DHS’s right of recovery for the overpayment of MA benefits is set forth in WIS. STAT. § 49.497. This right is triggered when there is (1) “[a] misstatement or omission of fact by a person supplying information in an application for benefits”; (2) a failure by an MA 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”; or (3) a failure by an MA recipient “or any other person responsible for giving information on the recipient’s behalf” to “report any change in the recipient’s financial or

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<sup>2</sup> Moss argues that “the decision under review is that of the Division of Hearings and Appeals”—in other words, the ALJ—and “not that of DHS.” However, the ALJ’s decision is considered the final decision of DHS. See WIS. ADMIN. CODE §§ HA 3.01(2), 3.09(9)(a) (Oct. 2018).

nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements." Sec. 49.497(1)(a)1.-3. In this case, the right of recovery was triggered when Martinez completed the application for benefits without including Moss's income, which was required information since Moss was living with her and their son at the time. *See* WIS. STAT. § 49.471(6)(g).

Once triggered, the right of recovery is against the recipient of the benefits, in this case the son of Moss and Martinez. *See* WIS. STAT. § 49.497(1)(b). Furthermore, the statutes clearly provide that in cases where the liable recipient is a minor, that liability passes on to the parents of the minor recipient, against whom DHS may take action to collect the overpayments. *See* § 49.497(1m); *see also State ex rel. Kalal v. Circuit Court for Dane Cnty*, 2004 WI 58, ¶49, 271 Wis. 2d 633, 681 N.W.2d 110 ("A statute's purpose or scope may be readily apparent from its plain language or its relationship to surrounding or closely-related statutes—that is, from its context or the structure of the statute as a coherent whole."). The statutes do not provide for the assignment of liability to reach back to the specific person who submitted the misinformation, as Moss argues should be the case; rather, liability is simply assigned to the minor recipient's parents.<sup>3</sup>

Nevertheless, Moss argues that DHS relied on the BC+ Eligibility Handbook to determine parent liability, as the ALJ referenced provisions of that handbook in his discussion of

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<sup>3</sup> Moss cites to *Bankert by Habush v. Threshermen's Mut. Ins. Co.*, 110 Wis. 2d 469, 474, 329 N.W.2d 150 (1983) for the premise that there is a "general rule that no liability arises at common law by virtue of the parental relationship alone." However, Moss's liability here arises from the statutes, not common law. Indeed, *Bankert* was a tort case, and is thus inapposite here. *Id.* at 472.

that issue. Moss asserts that as a result, the handbook provisions constitute a “rule” as provided in WIS. STAT. § 227.01(13), and are subject to the standards for promulgating administrative rules set forth in §§ 227.10-227.30. Moss further contends that because the handbook had not been properly promulgated as a rule, it was invalid and unenforceable, and thus it was improper for the ALJ to have relied on it.

A “rule” is defined as “a regulation, standard, statement of policy, or general order of general application that has the force of law[.]” WIS. STAT. § 227.01(13). In contrast, a “guidance document” is distinguished from a “rule,” and defined as “any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin,” which “[e]xplains the agency’s implementation of a statute or rule enforced or administered by the agency,” or “[p]rovides guidance or advice with respect to how the agency is likely to apply a statute or rule enforced or administered by the agency, if that guidance or advice is likely to apply to a class of persons similarly affected.” Sec. 227.01(3m)(a).

Here, the handbook section referenced by the ALJ explained the application of the liability provisions of WIS. STAT. § 49.497; it does not have its own independent “force of law.” See WIS. STAT. § 227.01(13); see also *County of Dane v. Winsand*, 2004 WI App 86, ¶11, 271 Wis. 2d 786, 679 N.W.2d 885 (explaining that “[m]aterials developed by an agency as a reference aid for its staff that are ‘couched ... in terms of advice and guidelines rather than setting forth law-like pronouncements’ are not a ‘rule’” under § 227.01(13) because “they are not intended to have the effect of law” (citation omitted)). In other words, the handbook provisions did not create a new law, but rather were designed to explain the application of the existing statutes on this issue. See *Service Emps. Int’l Union, Local 1 v. Vos*, 2020 WI 67, ¶102, 393

Wis. 2d 38, 946 N.W.2d 35 (explaining the guidance documents “are communications *about* the law—they are not the law itself,” in that they “do not have the force or effect of law, and they provide no authority for implementing or enforcing standards or conditions,” but rather just “‘explain’ statutes and rules,” or “‘provide guidance or advice’ about how the executive branch is ‘likely to apply’ a statute or rule”).

In fact, the ALJ stated in his decision that the handbook was *not* “controlling authority” regarding the issue of parental liability, but instead simply recognized a “common sense” stance that parents are generally obligated for financial liabilities incurred by their children. *See Dean Med. Ctr., S.C. v. Conners*, 2000 WI App 202, ¶17, 238 Wis. 2d 636, 618 N.W.2d 194 (“[a] parent’s duty to support his or her child is not a debt but an obligation that arises from that person’s status as a parent,” and “[p]ermitting creditors to seek payment for necessities from either parent maintains the responsibility of each parent for necessities for his or her child”). We therefore reject Moss’s argument that the ALJ improperly relied on an unpromulgated rule.

In sum, we conclude that the relevant statutes provide for the recovery from Moss of the overpayment of MA benefits for his son, and therefore DHS properly found that Moss was liable for those overpayments. Accordingly, we affirm.

Therefore, upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21 (2021-22).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*