



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/169894

PRELIMINARY RECITALS

Pursuant to a petition filed November 06, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on January 7, 2016, at Kenosha, Wisconsin.

This matter was previously scheduled for hearing on December 3, 2015, but the Petitioner requested an adjournment, because he wanted to seek out legal help. Consequently, the hearing was rescheduled to the January 7, 2016 date.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly determined that the Petitioner was liable for an overpayment of benefits for the period of January 2015 through May 2015.

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, Wisconsin 53703

By: [REDACTED], Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On February 8, 2014, the Petitioner applied for healthcare benefits. At that time, the Petitioner reported no income. (Exhibit 3)
3. On or about that date, the agency determined the Petitioner to be eligible for BadgerCare+ benefits, effective March 1, 2015, based upon income from unemployment benefits. (Exhibit 13)
4. On March 7, 2014, the agency sent Petitioner a notice, indicating that he was approved for BadgerCare+ benefits, effective April 1, 2014. (Exhibit 4)
5. On August 8, 2014, the Petitioner obtained employment, but didn't begin receiving income until November 2014. The Petitioner did not report this income to the agency. (Exhibits 5, 6, and 12)
6. On January 15, 2015, the agency sent the Petitioner notice that he needed to complete a renewal to continue receiving benefits. (Exhibit 12)
7. On January 31, 2015, the agency changed the Petitioner's renewal date, because it wanted to reduce volume of renewals it needed to complete at that time. (Testimony of Ms. [REDACTED]; Exhibit 12)
8. The Petitioner did not want to continue benefits, so took no action to complete a renewal. (Testimony of the Petitioner)
9. Sometime between April 24, 2015 and May 11, 2015, the agency closed the Petitioner's case and ended his benefits. (Exhibit 12)
10. On October 14, 2015, the agency sent the Petitioner a Medical Assistance / BadgerCare / BadgerCare Plus Overpayment Notice, Claim # [REDACTED], indicating that the Petitioner was overpaid benefits in the amount of \$1,465.70 for the period of January 1, 2015 to May 31, 2015. (Exhibits 7 and 10)
11. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 3, 2015. (Exhibit 1)
12. On that same date the agency sent the Petitioner a repayment agreement. (Exhibit 11)

DISCUSSION

An overpayment of BadgerCare+ benefits occurs when benefits are paid for someone who was not eligible for them, or when premium calculations are incorrect. *BadgerCare+ Eligibility Handbook §28.1*

Some examples of how overpayments occur are:

1. Concealing or not reporting income
2. Failure to report a change in income

3. Providing misinformation at the time of application regarding anything that would affect eligibility.

Id.

“Overpayments can only be recovered if the member failed to report a change for which they were notified they were required to report.” *BEH §28.1*

In the case at hand, the Petitioner does not dispute the fact that he is responsible for an overpayment of benefits that occurred through the end of his certification period, because he failed to report income from his new job. However, Petitioner argues that he should not be held liable for any other overpayment, because the agency incorrectly continued his benefits.

“The first required eligibility renewal for a BadgerCare+ case is 12 months from the certification month.” *BEH §26.1.1* “An individual is subject to periodic review of eligibility every 12 months unless the eligibility is redetermined *sooner* based upon new information received and verified from enrollee reports or data sources...” 7 CFR 42 §600.340

Looking at the budget printout in Exhibit 13, it appears that the Petitioner’s 12-month certification period ended on February 28, 2015.

The agency was supposed to issue a renewal notice the second week of the 11th month, to give the Petitioner an opportunity to complete his renewal, before the expiration of his benefits on February 28, 2015. *BEH §26.1.1* Looking at the case comments, it appears that the agency did this on January 15, 2015. (See Exhibit 12)

Thus, it was not unreasonable for the Petitioner to believe his benefits would end on February 28, 2015, if he did not complete the renewal.

Two weeks after issuing the renewal notice, the agency decided to change the Petitioner’s renewal date and extend the Petitioner’s benefits, beyond the 12-month certification period, because it wanted to reduce its work load. It was agency error to change the Petitioner’s renewal date and continue the Petitioner’s benefits beyond the end of his 12-month certification period, because there is nothing in Chapter 26 of the BadgerCare+ Eligibility Handbook, and nothing in 7 CFR 42 §600.340 that allows the agency to continue benefits beyond the end of the 12-month certification period without an actual renewal. On the contrary, the handbook uses mandatory language, stating that renewal in the 12 month of the certification period is “required” and the Federal regulations use concrete terms, “is subject to periodic review every 12 months.”

Further, the agency did not provide the Petitioner with notice that they were changing his renewal date and continuing his benefits beyond the 12-month certification period. Again, there is no provision in Chapter 26 of the BadgerCare+ Eligibility Handbook or 7 CFR 42 §600.340 that allows the agency to change a renewal date and extend benefits beyond the 12th month without notice.

Thus, any overpayment of benefits occurring after February 28, 2015, was due to agency error. Per *BEH §28.3*, overpayments resulting from agency error are not recoverable. Accordingly, Petitioner is not liable for any overpayment occurring after February 28, 2015.

Petitioner is only liable for an overpayment for the month of January 2015. (It is undisputed, per Exhibit 7, that no overpayment occurred in February 2015, because Petitioner was under the 100% FPL income limit in that month.)

CONCLUSIONS OF LAW

The agency correctly determined the Petitioner is liable for an overpayment in January 2015.

The agency incorrectly determined that the Petitioner was liable for an overpayment of benefits for the period of March 2015 through May 2015.

THEREFORE, it is

ORDERED

That the agency amend overpayment claim number [REDACTED] to reflect an overpayment for the month of January 2015, only. The agency shall remove the overpayment claims for March 2015, April 2015 and May 2015. The agency shall take all administrative steps necessary to complete this task within ten days 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, 5005 University Avenue, Suite 201, 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, Madison, Wisconsin 53703, **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 22nd day of February, 2016

\sMayumi M. Ishii
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 February 22, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability