



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/170282

PRELIMINARY RECITALS

Pursuant to a petition filed November 23, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Lafayette County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on January 6, 2016, by telephone.

The issue for determination is whether the petitioner was overpaid MA/BadgerCare Plus (BCP) benefits from May through November 2015, and whether the overpayment is recoverable.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [Redacted] ES Spec.
Lafayette County Department of Human Services
627 Main Street
Darlington, WI 53530

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a resident of Lafayette County.
2. The petitioner applied for BCP online as a household of one person on February 18, 2015, and was approved. On March 2, 2015, the Department mailed the petitioner an eligibility notice that advised to her of the following income reporting requirement: "If your household's total monthly

income (before taxes) goes over \$980.83, you must report it by the 10th day of the next month.”
See, Exhibit 1, p.3.

3. The petitioner began a job on April 6, 2015, and made no report of it to the Department until early November, 2015. The initial expectation was that she would work at least 30 hours weekly, at \$12.65 per hour. The Department first learned of the employment through a Department of Workforce Development employer wage matching report (“SWICA cross-match”) that it received on October 30, 2015.
4. The petitioner received gross wages from her job of \$809.35 in April, \$1,509.50 in May, \$1,216.24 in June, \$2,078.60 in July, and \$1,214.57 in August, 2015. The petitioner was paid \$12.65 hourly by her employer, and her gross income exceeded the \$980.83 limit for September, October and November 2015 also.
5. The Department mailed a *Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice* to the petitioner on November 9, 2015. The *Notice* advised that the petitioner was overpaid \$1,205.36 in BCP benefits for the May 1, 2015 through November 30, 2015 period. Exhibit 3.
6. The BCP program placed the petitioner into an HMO. Every month, the BCP program paid the HMO a monthly capitation fee of \$143.31 for the petitioner. The capitation fee was multiplied by the months of ineligibility, and added to other BCP-paid amounts, to arrive at the overpayment total.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

49.497 Recovery of incorrect medical assistance payments. (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.

(b) 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. ...

(emphasis added)

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook(BCPEH)*, §28.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a “no eligibility” case, to base the overpayment determination on the actual MA/BCP charges paid (see 2nd paragraph below):

28.4.2 Overpayment Amount

Use the actual income that was reported or required to be reported in determining if an overpayment has occurred.

If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount.

If the case is still eligible for BC+ for the timeframe in question, but there was an increase in the premium, recover the difference between the premiums paid and the amount owed for each month in question. ...

BCPEH, § 28.4.2.

At hearing, the petitioner did not deny the wages attributed to her by the agency for the April through August overpayment period. She did testify to her belief that she only worked 20 hours per week from September through November. She did not produce earnings records in support of her testimony. Given the petitioner's \$12.65 hourly pay, she exceeds the BCP income limit if her hours average more than 19.4 hours weekly. The agency worker testified that the employer reported 29 hours and then 33 hours weekly for two of the September weeks. If 29 and 30 hours are added to 20 hours for the other two weeks, the result is 131 hours (29+33+20+20) for the month, and gross income of \$1,657 for September (over the limit). For October, the agency worker testified that the employer reported 33 hours, then 36 hours, and then 27 hours weekly. If these hours are added, even with one week missing, the result is 96 hours and earnings of \$1,214 for October (over the limit). The first two weeks in November showed 33 hours and then 27 hours worked, again on pace to exceed 19.4 hours weekly. Thus, I found that the petitioner's income exceeded the \$980 limit from May through November 2015.

Having found that the petitioner's income was too high from May through November, I must nonetheless make one adjustment to the Department's overpayment determination – the inclusion of May in the overpayment period. The *BCPEH* instructs the worker to begin by noting the date the change (job commencement) should have been reported, which in this case was May 10:

Failure to Report

For ineligible cases, if the overpayment is a result of failure to report a required change, calculate the date the change should have been reported and which month the case would have closed or been adversely affected if the change had been reported timely.

BCPEH, § 28.4.1. If the petitioner had reported her job on May 10, the first month that the case would have closed was June 2015. Therefore, I will remand this case to the agency to remove May 2015 charges from the overpayment total (the specific charges breakdown for May is not in the hearing record).

The petitioner also stated that she did not understand that she needed to report the increases when they occurred. However, the eligibility notice issued to her on March 2 clearly states the reporting requirement. So, I conclude that her failure to report her employment and earnings was intentional, and therefore recoverable.

CONCLUSIONS OF LAW

1. The Department correctly determined that the petitioner's income exceeded the BCP eligibility limit of \$980.83 from May 2015 through November 2015.
2. The petitioner was advised of BCP income reporting requirements and intentionally failed to report her job commencement and earnings to the Department from April into early November 2015.
3. The Department erred in including the May 2015 BCP charges in the overpayment calculation, because the petitioner had until May 10, 2015, to report the relevant change.
4. The Department may recover the BCP overpayment amounts for June through November 2015.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the agency with instructions to re-determine the amount of the petitioner's BCP overpayment by deleting BCP charges for May 2015 from the overpayment total. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition is dismissed.

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 Madison,
Wisconsin, this 28th day of January, 2016

\sNancy J. Gagnon
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 January 28, 2016.

Lafayette County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability