



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/170387

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 25, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on January 05, 2016, at Racine, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover an overissuance of BC+ benefits in the amount of \$2,466 from the Petitioner for the period of January 1, 2013 – September 30, 2013.

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]  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was enrolled in BC+ from March, 2011 – September, 2013.

3. On October 15, 2012, the agency issued a notice to the Petitioner informing him that he and his daughter were no longer enrolled in BC+'s [REDACTED] HMO. The notice informed the Petitioner that he could use his ForwardHealth card at any provider that accepts BC+.
4. On or about November 1, 2012, the Petitioner submitted a renewal application. He reported a household of two that included himself and his minor daughter. No earned income was reported. On November 2, 2012, the agency issued a Notice of Decision to the Petitioner informing him he would continue to receive BC+ benefits. The notice advised him that this determination was based on household income of \$350/month from child support and rent of \$300/month. The notice further informed him of the requirement to report to the agency by the 10th day of the next month if gross monthly household income exceeded \$1,640. The notice further advised the Petitioner to report to the agency if he had a change in address.
5. On January 21, 2013, the agency issued a notice to the Petitioner that he must choose an HMO by February 15, 2013 and that if he did not choose an HMO, one would be assigned to him on March 1, 2013.
6. On February 18, 2013, the agency issued a notice to the Petitioner that he and his daughter were enrolled in [REDACTED] Healthcare effective March 1, 2013. The notice also informed the Petitioner that if he did not want to be enrolled in this HMO, he had until May 31, 2013 to contact the agency.
7. On March 25, 2013, the agency mailed a notice reminding the Petitioner to complete a FS renewal. On April 11, 2013, this notice was returned to the agency as undeliverable with no forwarding address.
8. The agency had no current address for the Petitioner until August, 2013 when the agency received information that the Petitioner moved to Racine County.
9. On August 20, 2013, the agency received a wage discrepancy alert for the Petitioner's case. [REDACTED] of Wisconsin reported income to the State of Wisconsin for the Petitioner. On or about August 20, 2013, the agency issued a request to the Petitioner's employer for wage verification. The information was due August 30, 2013. No information was submitted by the due date.
10. On August 21, 2013, the agency issued a request for verification of wages and income to the Petitioner at his new address in Racine County. The information requested was due August 30, 2013. No information was submitted by the due date.
11. On September 29, 2015, the agency received wage verification from [REDACTED]. The verification reported the Petitioner received the following gross wages:

November, 2012	\$2,460
December, 2012	\$2,895
January, 2013	\$2,770
February, 2013	\$3,775
March, 2013	\$3,605
April, 2013	\$2,847.50
May, 2013	\$3,565
June, 2013	\$2,675
July, 2013	\$3,060
August, 2013	\$3,740

11. On October 9, 2015, the agency issued a BC+ Overpayment Notice to the Petitioner informing him that the agency intends to recover an overissuance of FS benefits in the amount of \$2,466 for the period of January 1, 2013 – September 30, 2013 based on the Petitioner's failure to report earned income to the agency. The notice further advised the Petitioner of the right to appeal the agency's determination by filing an appeal with the Division of Hearings and Appeals on or before November 23, 2015.
12. On November 25, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of an action by a county agency concerning MA must be filed within 45 days of the date of the action. Wis. Stats. § 49.45(5). The petitioner's appeal was filed 47 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Even if DHA had jurisdiction, the evidence clearly demonstrates that the agency properly seeks to recover an overissuance of BC+ benefits from the Petitioner.

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

In this case, the Petitioner failed to notify the agency when his income exceeded reporting requirements in November, 2012. Petitioner was required to report to the agency by December 10, 2013. This would have caused the agency to re-determine his benefits effective January 1, 2013.

The Petitioner's testimony at the hearing that he was unaware that he was enrolled in BC+ was not credible. He has been enrolled since March, 2011 and has received numerous notices from the agency regarding his enrollment. Petitioner did not comply with the requirement to report to the agency by December 10, 2012 that he obtained employment and his earned income in November, 2012 exceeded the reporting requirement. He also did not report that he had insurance or request that his BC+ benefits be discontinued. Petitioner also never reported, as required, that he moved from West Allis to Racine County sometime in or around March, 2013.

The Petitioner argued that he did not complete a six month FS renewal in April, 2013 because he no longer needed benefits. This had no impact on his BC+ benefits which has an annual renewal period. The overpayment ended when the agency closed the Petitioner's case on September 30, 2013 after not receiving the requested wage verification information due August 30, 2013.

**CONCLUSIONS OF LAW**

The Petitioner's appeal is untimely.

**THEREFORE, it is ORDERED**

That the Petitioner's appeal 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**

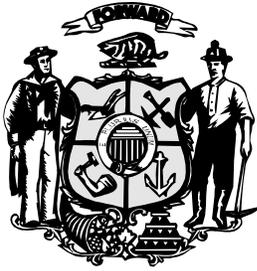
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 Milwaukee,  
Wisconsin, this 21st day of January, 2016

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\sDebra 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 January 21, 2016.

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