



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/170388

PRELIMINARY RECITALS

Pursuant to a petition filed November 24, 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 07, 2016, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly determined that the Petitioner was overpaid BadgerCare+ benefits for the period of July 1, 2014 through September 30, 2014 and the period of November 1, 2014 through March 31, 2015.

The record was held open until January 21, 2015, to give the Petitioner an opportunity to submit information concerning his insurance through the Market Place, in addition to documentation regarding calls he made to the agency.

The Petitioner submitted a packet that included a premium notice and a Termination Confirmation from his Market Place insurance. The packet also included a letter from the Petitioner, indicating that he was unable to access the necessary phone records. The packet has been marked as Exhibit 12 and entered into the record.

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 April 14, 2014, the agency sent the Petitioner a notice, advising him that his March 2014 application for health care was approved and that he would be enrolled in BadgerCare+, effective April 1, 2014, without a premium. The notice advised the Petitioner that if his gross income exceeded \$972.50 per month, he needed to report that change, by the 10th of the next month. (Exhibit 4)
3. Petitioner worked at a [REDACTED] from May 2014 through September 2015. In May 2014, the Petitioner earned \$1,546, exceeding the aforementioned reporting limit. (Exhibit 6)
4. Petitioner's income was \$1,393 in July 2014, \$1,504 in August 2014 and \$2,175 in September 2014. (See Exhibit 6)
5. Petitioner worked at [REDACTED] from October 2014 through April 2015. (Exhibit 6)
6. Petitioner's income for the following months was \$1,520 in November 2014, \$1830 in December 2014, \$1,830 in January 2015, \$1,520 in February 2015 and \$1,520 in March 2015. (Exhibit 6)
7. The Petitioner did not report his employment at either job. (Exhibit 3)
8. On October 15, 2015, the agency sent Petitioner two Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notices:
 Claim Number [REDACTED], in the amount of \$1,248.15 for the period of July 1, 2014 through September 30, 2014.
 Claim Number [REDACTED], in the amount of \$2,122.30 for the period of November 1, 2015 through March 31, 2015.
 (Exhibits 9a and 9b)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 30, 2015. (Exhibit 1)

DISCUSSION

An overpayment of BadgerCare+ benefits occurs when, "when BadgerCare Plus benefits are paid for someone who was not eligible for them or when BadgerCare Plus premium calculations are incorrect. The amount of recovery may not exceed the amount of the BadgerCare Plus benefits incorrectly provided." *BadgerCare+ Eligibility Handbook (BEH) §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 any information 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 other words, overpayments are recoverable when caused by 1) Member/applicant error, 2) Fraud, or 3) Member loss of an appeal. *BEH §28.2*

Agencies may not initiate a recovery for a BadgerCare+ overpayment, if the overpayment, “resulted from a non-member error, including the following situations:

1. The member reported the change timely, but the case could not be closed or the benefit reduced due to the 10-day notice requirement.
2. Agency error (keying error, math error, failure to act on a reported change, etc).
3. Normal prospective budgeting projections based on best available information.”

BEH §28.3

In the case at hand, the Petitioner obtained employment at a [REDACTED] in May 2014. His income exceeded the \$972.50 reporting limit. As such, he needed to report that change in income by June 10, 2014, which would have affected his benefits for July 2015. Petitioner was made aware of this reporting requirement in Exhibit 4, the April 14, 2014 notice that was sent to him. There is no indicating in the Case Comments, Exhibit 3, that the Petitioner reported this change in income.

Petitioner’s income was \$1,393 in July 2014, \$1,504 in August 2014 and \$2,175 in September 2014. (See Exhibit 6) Consequently, the Petitioner was not eligible for BadgerCare+ benefits for those months, because his income exceeded the 100% Federal Poverty Limit of \$972.50. *See BEH §§16.1 and 50.1*

Thus, an overpayment of benefits occurred from July 2014 through September 2014. Since the overpayment was caused by Petitioner’s failure to report the increase in his income, it was caused by member error, and is therefore, a recoverable overpayment.

In late October 2014, the Petitioner obtained employment at [REDACTED], but it is undisputed that his income for October 2014 was below the \$972.50 eligibility limit.

However, his income for the following months was \$1,520 in November 2014, \$1830 in December 2014, \$1,830 in January 2015, \$1,520 in February 2015 and \$1,520 in March 2015. (Exhibit 6) Again, the Petitioner was over the income limit for BadgerCare+ eligibility in those five months, so an overpayment of benefits occurred. Since the Petitioner did not report the income, the overpayment was caused by member error, and is therefore, recoverable.

The rules governing the calculation of the overpayment amount are found in *BEH §28.4.2*:

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 BadgerCare Plus, 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.

Looking at the Total Benefits Paid by Medicaid Report in Exhibit 8, I can find no error in the calculation of the overpayment amount.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner was overpaid BadgerCare+ benefits for the period of July 1, 2014 through September 30, 2014 and the period of November 1, 2014 through March 31, 2015.

THEREFORE, it is

ORDERED

That 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 Milwaukee,
Wisconsin, this 20th day of January, 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 January 20, 2016.

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