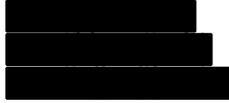




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/171399

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2016, 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 February 11, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$933 in medical benefits for the period from July 1, 2013 to March 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Racine County. She is a household size of one for the purposes of this BC+ overpayment.

2. On January 7, 2016 the agency sent the petitioner a notice stating that she was overpaid \$933 in Medical Assistance/BadgerCare Plus benefits, under claim number [REDACTED], for the period of July 1, 2013 to March 31, 2014.
3. On January 14, 2013 the agency sent the petitioner a notice stating that she had report when her household gross income exceeded \$1640.00. This, however, was the petitioner's reporting requirement for her FoodShare (FS) benefits.
4. On June 21, 2013 the agency sent the petitioner a notice stating that she had to report by the 10th day of the following month in which her household gross income exceeded \$957.50.
5. The petitioner's monthly gross household income was as follows:
 - a. April 2013 - \$179.94
 - b. May 2013 - \$717.95
 - c. June 2013 - \$707.58
 - d. July 2013 - \$1,875.33
 - e. August 2013 - \$1,542.85
 - f. September 2013 – \$2,167.43
 - g. October 2013 - \$1,908.05
 - h. November 2013 – \$2,020.10
 - i. December 2013 – \$2,717.30
 - j. January 2014 – \$1,325.93
 - k. February 2014 – \$1,495.13
 - l. March 2014 – \$2,150.64
6. The petitioner never reported an increase in income to the agency.
7. On January 19, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

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. The error does not have to be intentional; unintentional errors are to be recovered but are not considered to be fraudulent. Overpayments caused by agency error are not recoverable.

In 2013 BC+ recipients had to report increases in income that put them over certain percentages of the federal poverty level. Handbook, App. 27.3. Notices issued to the recipients informed them of the levels at which they needed to report. Thus slight increases in income did not need to be reported, but significant ones did.

In this case the record was left open for the agency to provide the notices with the reporting requirements that they sent to the petitioner. The first notice provided is from January 2013. It lists the reporting requirement of \$1,640.00. The next notice is from June 2013, and lists a reporting requirement of \$957.50.

The first month in which the petitioner's income exceeded \$1,640 was July 2013. The agency alleges that the petitioner's monthly gross income exceeded 100% FPL in May 2013. The agency has not provided sufficient evidence of this. The petitioner's gross earned income during that month was \$717.95. This is less than 100% FPL. She may have had a second job with an additional \$568.88 in earned income; however, this is unclear from the documentation. In their summary the agency simply states that the petitioner's income exceeded 100% FPL in May 2013. They do not state the specific amount of income nor how they calculated that amount. I do not know that the petitioner's income exceeded 100% FPL in May 2013. The same is true for June 2013. The work number amount listed for that month is \$707.58. It is possible that she had additional income from a different job in the amount of \$76.88, however, that is not clear, and even with that additional income, she is still less than 100% FPL.

Most concerning though is that the first notice that the agency provided with the 100% FPL reporting requirement is in June 2013. The January 2013 notice stated that the petitioner had to report when her monthly gross income exceeded \$1640. The petitioner's income did not exceed this amount until July 2013. The petitioner had until August 10, 2013 to report her increase in income, which she failed to do. Had she timely reported her increase in income, the changes would have been implemented effective September 1, 2013. For all these reasons, I find that the agency correctly established a medical overpayment for the period of September 1, 2013 through March 31, 2014. I cannot conclude that there was an overpayment for June and July 2013. There is no documentation that the petitioner was informed of the 100% FPL reporting requirements until June 21, 2013. However, even if she was informed of this reporting requirement earlier, the agency has failed to show that the petitioner's income exceeded that amount in May and June 2013.

I note that even though there was an overpayment due to the petitioner's failure to report, she would have remained eligible for BC+ benefits with a premium. The premium requirement income limit from August 1, 2013 to January 31, 2014 was \$1,273.48. From February 1, 2014 through March 31, 2014 the premium requirement income limit was \$1,293.43. The petitioner's premiums should have been, \$152 for September 2013, \$111 for October 2013, \$127 for November 2013, \$234 for December 2013, \$40 for January 2014, \$60 for February 2014, and \$151 for March 2014. This totals \$755. The petitioner appears to have paid \$120 in premiums leaving \$635 still due.

The petitioner testified that every time she received a report form she completed it and returned it to the agency. This is not sufficient. Notices provided to the petitioner explained her reporting requirements. She failed to abide by those requirements causing this overpayment. Even if this was an oversight on the petitioner's part, she is still responsible for the overpayment.

CONCLUSIONS OF LAW

The agency incorrectly determined that the petitioner was overpaid medical benefits in July and August 2013. The agency correctly concluded that the petitioner was overpaid medical benefits for the period from September 1, 2013 to March 31, 2014.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency with instructions to rescind the overpayment notice under claim number [REDACTED]. The agency shall then reissue an overpayment notice for the period from August 1, 2013 to March 31, 2014. The agency shall comply with this order within 10 days of the date of decision. In all other respects this 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 4th day of March, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 4, 2016.

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