



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/171458

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 Fond Du Lac County Department of Social Services in regard to Medical Assistance, a hearing was held on March 15, 2016, at Fond Du Lac, Wisconsin.

The issue for determination is whether the agency correctly established a Medicaid (MA) Overpayment in the amount of \$1,271.14 for the period from September 1, 2014 to June 30, 2015.

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: [Redacted]
Fond Du Lac County Department of Social Services
50 N Portland St
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Fond Du Lac County. She is an elderly, blind, or disabled (EBD) Medicaid (MA) household of one. Although she has a daughter, the daughter is not included in the test group for EBD medical coverage.

2. The petitioner receives SSDI. She has Medicare coverage through SSDI. In addition, she was receiving Medicare Premium Assistance for her Medicare Part B premium and BadgerCare (BC) Plus benefits as a childless adult. The BC Plus functions similar to a Medicare Supplemental.
3. On August 18, 2014 the petitioner completed a renewal for her medical public assistance benefits. At her renewal she reported that that her only income was \$1,047 from social security. She did not report any income from employment.
4. The petitioner began working for [REDACTED] on July 29, 2014. Her first paycheck was on August 8, 2014. The petitioner's employment income was as follows:
 - a. August 2014 – \$65.34
 - b. September 2014 – \$681.12
 - c. October 2014 – \$1073.93
 - d. November 2014 – \$711.71
 - e. December 2014 – \$731.79
 - f. January 2015 – \$0
 - g. February 2015 – \$351.79
 - h. March 2015 – \$725.32
 - i. April 2015 – \$726.50
 - j. May 2015 – \$1,271.27
 - k. June 2015 – \$964.39
5. The petitioner never reported the above-listed employment income to the agency. This monthly income was in addition to the petitioner's social security income. The petitioner received \$1,047 in social security from September 1, 2014 to November 30, 2014. In December 2014 she received \$942 from social security. From January 1, 2015 to June 30, 2015 the petitioner received \$1064 from Social Security. The petitioner's total monthly gross income was as follows:
 - a. August 2014 – \$1,112.34
 - b. September 2014 – \$1,728.12
 - c. October 2014 – \$2,120.93
 - d. November 2014 – \$1,758.71
 - e. December 2014 – \$1,673.79
 - f. January 2015 – \$1,064
 - g. February 2015 – \$1,415.79
 - h. March 2015 – \$1,789.32
 - i. April 2015 – \$1,790.50
 - j. May 2015 – \$2,335.27
 - k. June 2015 – \$2,028.39
6. Between September 1, 2014 and June 30, 2015 the petitioner received \$839.20 in Medicare Premium Assistance benefits that she was not entitled to receive. The agency paid an additional \$431.94 for the petitioner's BC Plus benefits which she was also not entitled to receive.

7. On December 10, 2015 the agency sent the petitioner two Medicaid (MA) overpayment notices. The first notice stated that she was overpaid \$839.20 in MA benefits from September 1, 2014 to June 30, 2015. The second notice stated that she overpaid \$431.94 in additional MA benefits for the same period.
8. 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. Overpayments caused by agency error are not recoverable.

In this case the petitioner received Medicare Premium Assistance and BC Plus benefits that she was not entitled to receive. For 11 months she received benefits and was employed. She never reported this employment to the agency. This is client error, and is thus recoverable. The petitioner argues that her employer faxed in an employment verification form. I do not find this testimony credible. There is no history of the agency receiving this form. In addition, the petitioner never followed up with the agency. The petitioner has not presented any information from her employer corroborating her testimony. The petitioner also failed to report this employer on her six month report form. It is the petitioner's failure to report her employment that caused the overpayment.

Although the petitioner does not contest the agency's calculations, I have reviewed those calculations, and the calculations are correct. For the purposes of medical coverage, the petitioner is a disabled household. She received SSDI and Medicare because she is disabled. Although she is a younger adult with a child, the EBD Medicaid household only consists of the petitioner. The regulations provide that "an EBD fiscal group includes the individual who is non-financially eligible for Medicaid and anyone who lives with him or her **and who is legally responsible for him or her.** Medical Eligibility Handbook § 15.1.1. The petitioner's child is not legally responsible for the petitioner, rather it is the other way around; the petitioner is legally responsible for her child. Thus, the agency properly determined the petitioner's eligibility for Medicare Premium Assistance as a household of one. For the purposes of BC Plus benefits the petitioner is a household of two.

Medicare Premium Assistance includes Qualified Medicare Beneficiary (QMB), Specified Low Income Medicare Beneficiary (SLMB), and Specified Low Income Medicare Beneficiary Plus (SLMB+) program. Medical Eligibility Handbook § 32.1.1. QMB pays for the recipients' Medicare Part A and B premiums and some Medicare copays. Id. SLMB and SLMB+ pay the participants' Medicare Part B premiums. Id. The income limit for QMB is 100% of the Federal Poverty Level (FPL), for SLMB it is 120% of the FPL, and for SLMB+ it is 135% of the FPL. Medical Eligibility Handbook § 32.2.3., 32.3.2., 32.4.2. For a household size of one 100% of the FPL is \$980.83, 120% of the FPL is \$1,177, and 135% of the FPL is \$1,324.13. Medical Eligibility Handbook § 39.5. For BC Plus the income limit is 100% of the FPL. BC+ Handbook, Appendix 16.1.1. For a household size of two 100% of the FPL is \$1,327.50. Medical Eligibility Handbook § 39.5.

The petitioner's income as a household size of one was always over 135% FPL. Thus, the petitioner was ineligible for QMB, SLMB, and SLMB+. For BC Plus the petitioner income was over 100% FPL as a household size of two in all months except for January 2015. The agency did not assess a BC Plus overpayment for January 2015. The agency's calculations and determination of these overpayments are correct.

CONCLUSIONS OF LAW

The agency correctly established a Medicaid (MA) Overpayment in the amount of \$1,271.14 for the period from September 1, 2014 to June 30, 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 6th day of April, 2016

\sCorinne Balter
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 April 6, 2016.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability