



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MOP/172117

PRELIMINARY RECITALS

Pursuant to a petition filed February 16, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kewaunee County Department of Social Services in regard to Medical Assistance, a hearing was held on March 15, 2016, at Sheboygan, Wisconsin.

The issue for determination is whether the Kewaunee County Department of Social Services (the agency) correctly determined that the Petitioner was overpaid BadgerCare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted names of parties]

Respondent:

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

By: [Redacted] Economic Support Specialist
Kewaunee County Department of Social Services
810 Lincoln Street
Kewaunee, WI 54216

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Kewaunee County.

2. The Petitioner was arrested on June 6, 2015, and has been incarcerated ever since. (Testimony of Petitioner)
3. The Petitioner did not report his incarceration to the agency. (Testimony of Petitioner)
4. On January 7, 2016, the agency sent the Petitioner a manual Wisconsin Medicaid and BadgerCare Plus Overpayment Notice, indicating the Petitioner was overpaid BadgerCare+ benefits in the amount of \$1,444.50 for the months of July 1, 2015 through December 31, 2015. (Exhibit 1)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 16, 2016. (Exhibit 5)

### **DISCUSSION**

It is undisputed that the Petitioner has been incarcerated from June 6, 2015, to the present.

BadgerCare+ Eligibility Handbook (BEH) §27.2 states that changes in living arrangements, such as institutionalization or incarceration, must be reported within ten days after the change occurred. Thus, Petitioner needed to report the change by June 16, 2015. It is undisputed that he did not do so.

The BadgerCare+ eligibility handbook discusses the effects of incarceration on BadgerCare+ eligibility:

#### **3.6 Inmates**

An inmate is residing in a public institution on an involuntary basis. For example, a prisoner in a jail, prison, or other correctional facility is considered an inmate. A staff person voluntarily residing in a public institution is not considered an inmate. An individual voluntarily residing in an institution while waiting for other living arrangements to be made that are appropriate to the person's needs is not considered an inmate. An individual who is legally confined to his or her home by a monitoring device, such as an ankle bracelet, is not considered an inmate for the purposes of BadgerCare Plus. *Individuals who are inmates of a public institution are not eligible for BadgerCare Plus unless they meet the Huber criteria or the following two exceptions:*

- **Prenatal exception:** Pregnant women may apply for and enroll in the BadgerCare Plus Prenatal Program (see [Chapter 41 BadgerCare Plus Prenatal Program](#)) while they are inmates.
- **Inpatient exception:** If an inmate resides outside a public correctional institution for more than 24 hours at any one time, he or she can qualify for BadgerCare Plus during that time period if he or she meets all other eligibility criteria. For example, if an inmate of a public institution is admitted as an inpatient to a medical institution for 24 hours or more and is otherwise eligible, manually certify him or her for BadgerCare Plus from the admission date through the discharge date.

*(Emphasis added)*

#### **3.6.3 Huber Law**

Huber Law prisoners who are released from jail for the purpose of attending to the needs of their families can become eligible for BadgerCare Plus if they:

- Intend to return to the home, and

- Continue to be involved in the planning for the support and care of the minor children.

Huber Law prisoners who are released for a purpose other than attending to the needs of their families are not eligible for BadgerCare Plus. They should be considered absent parents.

Petitioner has been incarcerated since June 6, 2015. Petitioner obviously does not meet the prenatal exception and there is no assertion, nor any evidence, that the Petitioner was in the hospital for 24 hours or more at any time. Further, there is no assertion and no evidence that the Petitioner was granted Huber Release to care for minor children. Consequently, the Petitioner was not eligible for BadgerCare+ benefits between July 1, 2015 and December 31, 2015. Accordingly, it is found that the agency correctly determined that the Petitioner was overpaid benefits during that time.

The Petitioner contested the overpayment amount, which is based entirely on a capitation rate. (see Exhibit 4) The Petitioner asserts that there should have been no capitation rate, because he did not have an HMO that administered his BadgerCare+ benefits. However, Kewaunee County has six HMOs that serve that area. See <https://www.dhs.wisconsin.gov/publications/p1/p1202a.pdf> As such, the Petitioner had to have had an HMO.

### CONCLUSIONS OF LAW

It is found that the agency correctly determined that the Petitioner was overpaid \$1,444.50 in BadgerCare+ benefits for the period of July 1, 2015 to December 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 22nd day of April, 2016

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\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 April 22, 2016.

Kewaunee County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability