



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/173865

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on May 12, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly established a medical overpayment in the amount of \$3,809.34 for September 1, 2015 through March 31, 2016.

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]
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Waukesha County. The petitioner and her husband are a household size of two.
2. The petitioner and her husband applied for BadgerCare (BC) Plus benefits in June 2015. On June 19, 2015 the agency sent both the petitioner and her husband a notice stating that they were

approved for BC Plus benefits effective June 1, 2015. The notice went on to state that the household had to report by the 10<sup>th</sup> day of the following month in which their monthly income, before taxes, exceeded \$1,327.50.

3. The household's monthly income was as follows:
  - a. July 2015 – \$3,230.78
  - b. August 2015, September 2015, October 2015, and November 2015 - \$4,615.40
  - c. December 2015 - \$6,923.10
  - d. January 2016, February 2016, and March 2016 - \$4,615.40
4. The petitioner never reported that the monthly household income had increased.
5. From September 1, 2015 through March 31, 2016 the agency paid \$3,809.34 for the family's BC Plus benefits.
6. On April 1, 2016 the agency received a blank employment verification form with a handwritten note at the bottom stating that they wanted to opt of State insurance because they had insurance through the petitioner's wife's employment.
7. On April 8, 2016 the agency sent the petitioner a notice of medical overpayment stating that she was overpaid \$3,809.34 for September 1, 2015 through March 31, 2016.
8. On April 22, 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 MA Handbook, Appendix 6.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Under BC Plus rules the income limit for childless adult is 100% of the poverty level. BC Plus Handbook, Appendix 16.1.1. That amount for a two-person household at the time of this overpayment was \$1,327.50. BC Plus Handbook, App. 50.1. The notices sent to BC Plus recipients reflect the

eligibility limits in the reporting requirements. A childless adult must report when his or her monthly household gross income exceeds this 100% of the poverty level. BC Plus Handbook, App. 27.3.

The agency sent the petitioner a notice stating that he and his wife would receive BC Plus benefits effective June 1, 2015, and that they would have to report when their income exceeded \$1,327.50. This is 100% FPL for a household size of two. The petitioner's household income exceeded this reporting requirement in July 2015. They failed to report their increase in income to the agency. This failure to report caused the overpayment.

The petitioner argues that they attempted to cancel BC Plus benefits in September 2015. They were not able to report online and were not able to get through to the call center. I do not find this testimony credible. The petitioner's husband sent in a hand written note at the bottom of a blank form stating that they wanted to cancel their state insurance. This was not sent until after March 29, 2016. The agency received it April 1, 2016. A change in income can be reported by mail, telephone, fax, online, or at the local office. When an overpayment became eminent, the petitioners were able to find a way to cancel their state insurance. Their testimony that they tried to report in September 2015 is self-serving and not credible.

### **CONCLUSIONS OF LAW**

The agency correctly established a medical overpayment in the amount of \$3,809.34 for September 1, 2015 through March 31, 2016.

**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 7th day of June, 2016

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\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 June 7, 2016.

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