



FH

[REDACTED]

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

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP- 174478

**PRELIMINARY RECITALS**

On May 20, 2016, the above petitioner filed a hearing request under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to challenge a decision by the Outagamie County Department of Human Services regarding a Medical Assistance (MA) overpayment. The hearing was held on June 16, 2016, by telephone.

The issue for determination is whether the agency has established an overpayment of MA against the petitioner.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] | | | |

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI53703

By: [REDACTED], ESS Lead Worker  
Outagamie County Department of Human Services  
401 S. Elm Street  
Appleton, WI 54911-5985

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner's wife received MA from December 1, 2013-May 31, 2014. She was eligible for the MA under the BadgerCare Plus (BCP) Standard Plan as a pregnant woman.
3. Petitioner's wife gave birth to their daughter [REDACTED] on March, 20, 2014. [REDACTED] then became eligible under the BadgerCare Plus Standard Plan on March, 20, 2014 as a Continuously Eligible Newborn (CEN).
4. On March 9, 2015 the agency issued a notice to petitioner stating that effective April 1, 2015 [REDACTED] was enrolled in BadgerCare Plus Standard Plan, but her parents were not.
5. On or about February 26, 2016 the agency issued a request for verification of income to the petitioner. Nothing was returned to the agency.
6. On June 2, 2016 the agency issued a notice to petitioner stating that he was overpaid MA from April 1, 2015-March 31, 2016 in the amount of \$709.47 (Claim # [REDACTED]).

### DISCUSSION

The Department may recover any overpayment of MA that occurs because 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 [BadgerCare].
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.

Wis. Stat. §49.497; see also *BCP Handbook* §28.2, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The *BCP Handbook* provides further guidance to the agency on recovery of MA overpayments.

Do not initiate recovery for a BadgerCare Plus overpayment if it 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.

*BCP Handbook* §28.3.

The basic facts of this case were undisputed. Petitioner's wife was eligible for BCP as a pregnant woman from December 1, 2013-May 31, 2014. This eligibility was done in accordance with the *BCP Handbook*,

A pregnant woman who is enrolled in BadgerCare Plus stays eligible for:

- The balance of the pregnancy, and
- An additional 60 days after the last day of pregnancy through the end of the month in which the 60th day occurs.

*BCP Handbook*, §8.1. Petitioner's wife had her baby daughter on March 20, 2014. The daughter then was found eligible for BCP as a Continuously Eligible Newborn (CEN).

According to the *BCP Handbook*:

Newborn children are automatically eligible for BadgerCare Plus from the date of birth through the end of the month in which they turn 1 year old if both the following are true:

1. They are younger than 13 months old.
2. The natural mother was determined eligible in the state of Wisconsin for one of the following programs:
  - a. BadgerCare Plus
  - b. Other full-benefit Medicaid (see [Medicaid Eligibility Handbook Section 21.2 Full-Benefit Medicaid](#))
  - c. Emergency Services BadgerCare Plus
  - d. Emergency Services Medicaid (see [Medicaid Eligibility Handbook Section 34.1 Emergency Services](#))
  - e. BadgerCare Plus Prenatal Program (as a nonqualifying immigrant)

*BCP Handbook*, §8.2.

What happened after the end of the month in which the daughter turn 1 year old (March 2015) was that the agency automatically renewed her for BCP. As petitioner credibly testified, he did not understand the notice advising him that his daughter was enrolled in BCP after the one year of CEN meant that she was actually receiving some MA benefit. His understanding was what the policy above describes – that CENs get a year's worth of coverage and it would end at that time, just as his wife's coverage did. I also note that notice did not advise him to contact the agency to refuse the benefit. It also did not tell him that there would be a capitation rate paid out in MA on his daughter's behalf. Rather, he thought that if he did not use the BCP, there would be no charges to incur and he switched his medical insurance to that of his employer's at that time. They did not use the BCP coverage.

Additionally, the *BCP Handbook* provides the following about renewing eligibility:

A renewal is the process during which you reexamine all eligibility factors subject to change and decide if eligibility continues. The group's continued eligibility depends on its timely completion of a renewal. Each renewal results in a determination to continue or discontinue eligibility.

The first required eligibility renewal for a BadgerCare Plus case is 12 months from the certification month, except for:

1. **CENS** - The renewal date is 12 months from the date of birth.

2. **Pregnant women** -The renewal date is two calendar months after the date the pregnancy ends.

**Note:** Women in the BadgerCare Plus Prenatal Program lose eligibility on the date the pregnancy ends. However, they are automatically eligible for emergency services for two months after eligibility for BadgerCare Plus Prenatal Program ends (Chapter 41.6).

3. **Deductibles** - A renewal is not scheduled for a case that did not meet its deductible , unless someone in the case was open for BadgerCare Plus. For cases that did meet the deductible, the renewal date is six months from the start of the deductible period.

**Note:** For manually certified BadgerCare Plus cases, make sure the member receives a timely notice of when the renewal is due.

### **Agency Option**

For individuals whose eligibility is determined under non-MAGI rules, the agency may review any case at any other time when the agency can justify the need. Examples include:

- Loss of contact
- Member request

**Note:** Shortening certification periods in an attempt to balance agency workload is not permissible.

BadgerCare Plus members whose eligibility is determined using MAGI rules are required to complete a renewal no earlier or no later than 12 months from their certification period. **Individuals whose benefits are time-limited, such as CENs or pregnant women, will not be required to do a renewal at the end of their time limited benefit if the individual is on a case with other open BadgerCare Plus assistance groups.**

Once individuals' BadgerCare Plus eligibility is determined under MAGI rules, workers can complete an early renewal only if the member requests an early renewal. Once the member requests an early renewal, the renewal must be completed.

*BCP Handbook*, §26.1.1 (**emphasis added**).

Thus, under this policy, a CEN/petitioner's daughter was not required to do a renewal at the end of her time limited benefit if she was on a case with another open BCP case in her assistance group. She was not. She was also not given an opportunity to renew, for the agency to decide if eligibility continues, or if she even wanted to request the benefit. Accordingly, I cannot find that the agency opened her BCP correctly, and that this overpayment is due to agency error, which is not recoverable. The overpayment shall be rescinded.

### **CONCLUSIONS OF LAW**

The agency has not correctly established an MA overpayment against the petitioner.

**THEREFORE, it is**

**ORDERED**

That the petition herein be remanded to the agency with instructions to rescind and/or cease collection efforts for MA overpayment Claim # [REDACTED]. These actions shall be taken within 10 days of the date of this Decision. In all other respects, 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, **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 15th day of July, 2016

\s \_\_\_\_\_  
Kelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on July 15, 2016.

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