



2. On May 16, 2014, the Respondent completed an application for BadgerCare and FoodShare benefits for herself and her two children. (Exhibit 7)

3. In the May 2014 application, the Respondent reported working at a painting firm, 40 hours per week at \$15.50 per hour. This works out to be:

40 hours x \$15.50 per hour x 4.3 average weeks per month<sup>1</sup> = \$2,666 gross monthly income.

(Exhibit 7)

4. On May 22, 2014, the Petitioner contacted the agency to report that she had been laid off and that she would receive unemployment benefits in the amount of \$302.00. (Exhibit 4)

5. The Petitioner stopped receiving unemployment benefits on May 27, 2014. (Exhibit 4)

6. Petitioner obtained new employment on the last day of May 2014. It appears she received her first paycheck in July 2014. (Testimony of Petitioner; Exhibit 14)

7. On June 11, 2014, the agency sent the Petitioner a notice indicating that her application for FoodShare benefits was approved and that for June 2014 it was not counting any earned income. (Exhibit 3)

8. On June 16, 2014, the Petitioner contacted the agency to inquire about her BadgerCare+ benefits. The Petitioner told the agency that her children did not need the benefits, because they had health insurance through their father. (Exhibit 4)

9. On June 17, 2014, the agency sent the Petitioner a notice, indicating that her May application was approved and that she was enrolled in BadgerCare+. The children were not enrolled, because the Petitioner indicated that they had insurance coverage through their father. (Exhibit 12)

10. From her new job, Petitioner earned \$2,353.75 in July 2014; \$2,581.25 in August 2014; \$2,555.00 in September 2014; \$3,533.25 in October 2014; \$2,464.00 in November 2014; \$2,413.25 in December 2014; \$2,226.00 in January 2014; \$2,418.50 in February 2015; \$2,250.50 in March 2015, \$3,874.50 in April 2015 and \$2,951.63 in May 2015. (Exhibit 14)

11. On May 18, 2016, the agency sent the Petitioner a Medical Assistance / BadgerCare / BadgerCare Plus Overpayment Notice, claim number [REDACTED], indicating the Petitioner was overpaid \$3,008.91 in benefits for the period of September 1, 2014 through May 2015. (Exhibit 15)

12. On June 2, 2015, the agency sent the Petitioner a repayment agreement. (Exhibit 2)

13. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 9, 2016. (Exhibit 17)

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<sup>1</sup> 7 C.F.R. 273.10(c)(2) requires future income to be estimated using a 4.3 weeks per month, or 2.15 bi-weekly pay periods per month.

## DISCUSSION

An overpayment of BadgerCare+ benefits occurs when, “when BadgerCare Plus benefits are paid for someone who was not eligible for them or when BadgerCare Plus premium calculations are incorrect. The amount of recovery may not exceed the amount of the BadgerCare Plus benefits incorrectly provided.” *BadgerCare+ Eligibility Handbook (BEH) §28.1*

Some examples of how overpayments occur are:

1. Concealing or not reporting income.
2. Failure to report a change in income.
3. Providing misinformation at the time of [application](#) regarding any information that would affect eligibility.

*Id.*

“Overpayments can only be recovered if the member failed to report a change for which they were notified they were required to report.” *BEH §28.1*. In other words, overpayments are recoverable when caused by 1) Member/applicant error, 2) Fraud, or 3) Member loss of an appeal. *BEH §28.2*

It is the agency’s contention that the Petitioner caused an overpayment of benefits by failing to report the new employment she obtained at the end of May 2014.

For BadgerCare purposes, the Petitioner needed to report any changes in income that put her household over the 100% FPL reporting threshold, by the tenth of the month, following the month of the change. *BEH §27.3* In 2014 100% of FPL for a household of three was \$1649.00 per month. *BEH §16.1* In 2015 100% of FPL for a household of three was \$1,674.00 per month. *Id.*

The record shows the Petitioner’s income went over the 100% FPL reporting threshold in July 2014 when she earned \$2,353.75. So, she needed to report the change by August 10, 2014 to affect her September benefits.

The Petitioner asserts that she did, in fact, report her new job and her new income when she called the agency on June 16, 2016. The Petitioner testified that she remembers this clearly, because she had gone to the doctor and found out that she needed her old Forward Health Card, which she had previously discarded. The Petitioner testified that she needed to contact the agency to request a new Forward Health Card. However, the Case Comments in Exhibit 4 do not document this conversation. Barbara Tobias, an Economic Support Worker, testified that she spoke to the Petitioner on the date in question, and although she has no specific recollection of their conversation, she would have noted any reported change in income or employment in the Case Comments.

Petitioner’s claim is a little bit strange, given that the agency did not notify her of her eligibility until July 17, 2014. In addition, the Petitioner indicated that she incorrectly thought she fulfilled her reporting requirement when she stopped applying for unemployment benefits. In the absence of documentary evidence showing that the Petitioner reported her new employment to the county agency by August 10, 2014, it is found that the overpayment was caused by client error.

Effective April 1, 2014, an adult must have household income must below 100% the Federal Poverty Level, in order to be eligible for the BadgerCare+ health plan and all available gross income must be counted. *BEH §16.1*

Again, in 2014 100% of FPL for a household of three was \$1649.00 per month. *BEH §16.1* In 2015 100% of FPL for a household of three was \$1,674.00 per month. Id.

According to Exhibit 14, Petitioner earned income as follows:

\$2,353.75 in July 2014  
\$2,581.25 in August 2014  
\$2,555.00 in September 2014  
\$3,533.25 in October 2014  
\$2,464.00 in November 2014  
\$2,413.25 in December 2014  
\$2,226.00 in January 2014  
\$2,418.50 in February 2015  
\$2,250.50 in March 2015  
\$3,874.50 in April 2015  
\$2,951.63 in May 2015.

As such, she was consistently over the 100% FPL income limit and therefore, ineligible for benefits. Consequently, an overpayment of benefits occurred as stated in the overpayment notice dated May 18, 2016.

**CONCLUSIONS OF LAW**

The agency correctly determined the Petitioner was overpaid \$3,008.91 in benefits for the period of September 1, 2014 through May 2015.

**THEREFORE, it is ORDERED**

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 22nd day of  
September, 2016

\s \_\_\_\_\_  
Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on September 22, 2016.

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