



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MOP - 174900

PRELIMINARY RECITALS

Pursuant to a petition filed on June 8, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Grant County Department of Social Services regarding Medical Assistance (MA), a hearing was held on July 27, 2016, by telephone.

The issue for determination is whether the agency erred in its calculation of a BC+ overpayment in the amount of \$8,245.65.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
Grant County Department of Social Services
8820 Hwys 35 and 61 South
PO Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Iowa County.

2. Petitioner was informed of a reporting requirement on 4/27/15 stating that petitioner was required to report if household income exceeded \$1,327.50.
3. On 5/13/16, the agency issued a notice of overpayment of medical assistance in the amount of \$8,245.65 for the period from 7/1/15 to 4/30/16.
4. Petitioner appealed.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

49.497 Recovery of incorrect medical assistance payments. (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.

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted.

Wis. Stat. §49.497(1). (Note: *Italicized for emphasis.*) BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook* (BCPEH), §28.1, online at <http://www.emhandbooks.wi.gov/bcplus/>.

Department policy then instructs the agency, in a "no eligibility" case, to base the overpayment determination on the actual MA/BCP charges paid.

28.1 OVERPAYMENTS.

An "overpayment" occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. 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.

28.2 RECOVERABLE OVERPAYMENTS.

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

1. Applicant /Member Error

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

Applicant/Member error occurs when there is a:

- a. Misstatement or omission of facts by a member, or any other person responsible for giving information on the member's behalf at a BC + application or review.
- or
- b. Failure on the part of the member, or any person responsible for giving information on the member's behalf, to report required changes in financial (27.3) (income, expenses, etc.) or non-financial (27.2) information that affects eligibility, premium, patient liability or cost share amounts.

An overpayment occurs if the change would have adversely affected eligibility, the benefit plan or the premium amount.

BCPEH, §28.1 – 28.2.

In this case, the agency asserts that the petitioner failed to report an increase in income that brought the members to an ineligible status. The agency alleges that the change should have been reported June 10, 2015 which would have resulted in the BC+ case closing effective July 1, 2015. The agency calculated an overpayment from July 1, 2015 until April 30, 2016. The agency concedes that during at least November 2015 the household income dropped below the eligibility limit. But, the agency asserts that it calculated the overpayment based on total ineligibility regardless of monthly income because the case should have closed on July 1, 2015. This ignores the fact that a BC+ member, if the case had been closed, could have re-applied and obtained benefits again after a drop in income. The agency's calculation of the overpayment ignores the actual income received by the household. The agency either has this information or can obtain it.

The rules for the program included above explain that “[a]n “overpayment” occurs when BC+ benefits are paid for someone who was not eligible for them.” They further require that for an agency to determine whether an overpayment exists it should “[u]se the **actual income** that was reported or required to be reported in determining if an overpayment has occurred.” These rules also correlate to Section 22.2 of the Medicaid Eligibility Handbook. It is incorrect for the agency to recover an overpayment from petitioner in any months that petitioner would financially and otherwise been eligible for BC+.

Furthermore, petitioner ██████████ explained that she is paid in cash from her employer. She testified that she does not receive earned income in the amount of \$525 per month from ██████████ as budgeted by the agency for purposes of the overpayment. It appears that as part of the overpayment calculation the agency did not obtain employer verification from ██████████. The agency explained that

the \$525 was budgeted by a former worker relying on a 4/24/15 voicemail from [REDACTED] employer stating that petitioner works 20-22 days per month. That purported voicemail, only supported by a brief mention in the case comments, is in conflict with the EVF submitted by that employer which is dated 4/20/15 and states that petitioner works 9 hours per week.

Overall, this record is insufficient to support the overpayment as calculated in this case. I do not understand why the agency did not seek verification from the [REDACTED] employer for actual earned income paid. Petitioner [REDACTED] claims that the \$525 is not correct. I find her credible. That income may have a material impact on the amount of the overpayment in one or more of the months of the claimed overpayment. Given that the agency has the burden of establishing and supporting the overpayment, it falls well short of this burden.

If the agency elects to do so, it may issue a new overpayment claim, with appeal rights, after it obtains accurate actual income and determines the overpayment according to program rules.

CONCLUSIONS OF LAW

1. The agency erred in its calculation of a total overpayment for the overpayment period without regard for the actual income received by the household in the individual months.
2. The agency erred in not seeking actual income from [REDACTED] and instead relying on a note from a year earlier in case comments from a former worker purporting to relate what an employer said in a voicemail when that conflicts with the signed EVF that had been received from that employer previously.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with direction to reverse the overpayment claim and to cease all collection activity. These actions must occur within 10 days.

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 Madison,
Wisconsin, this 25th day of August, 2016

\s _____
John P. Tedesco
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 August 25, 2016.

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