



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/141828

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 26, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly determined that Petitioner was overpaid \$3945.00 in BadgerCare+ benefits for various months during the period of February 1, 2009 to May 30, 2012 due to a lack of reporting of self-employment income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jerome Hubbard

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner was sent a Medicaid overpayment notice dated May 16, 2012 that informed Petitioner that his household received \$3945.00 of Medicaid benefits that were not entitled to. This overpayment consist of the following claims:
- [REDACTED] for the period from February 1, 2009 through October 31, 2009 in the amount of \$1140.00;
 - [REDACTED] for the period from January 1, 2010 through December 31, 2010 in the amount of \$1058.00;
 - [REDACTED] for the period from this January 1, 2011 through December 31, 2011 in the amount of \$1697.00 and
 - [REDACTED] for the period from January 1, 2012 through May 31, 2012 in the amount of \$50.00.
3. The reason for this overissuance was that Petitioner is alleged to have failed to report self-employment income on mail-in Medicaid applications from 2009 forward. The underreporting of income caused the overpayment; specifically self-employment income from a sub-S corporation.
4. The \$3945.00 overpayment involved here consists of premiums paid by the State to the HMO for months in which Petitioner's family was not eligible for BadgerCare+ Plus because of income *and* of underpaid premiums for months in which there was eligibility for BadgerCare+ but premiums would have been higher because of the income. (Ex # 4).
5. Petitioner is self-employed; operating an accounting/bookkeeping service. The enterprise is a sub-S corporation.
6. Applications and renewal forms for BadgerCare+ Plus were filed by Petitioner and/or his spouse in January 2009 (Ex # 7), February 2010 (Ex # 8), February 2011 (Ex # 9) and February 2012 (Ex # 10). None mention any income other than a salary from the business; i.e., there is no indication that the profit from the business was reported.

DISCUSSION

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

BadgerCare+ is in the same subchapter as §49.497. See also, *BadgerCare+ Eligibility Handbook (BEH)*, §28.1, online at <http://www.emhandbooks.wi.gov/BadgerCare+lus/> :

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.
(Emphasis added).

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.

...

2. Fraud.

...

BEH, §28.1 – 28.2.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The Petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

The resolution to this case boils down to the issue of whether or not the agency was in receipt of information indicating that Petitioner is self-employed as well as the self-employment income amounts for the time periods in question. Petitioner believes that he informed the agency of the self-employment and provided the tax returns for the course of the time period involved here so that the agency could properly budget that income. The agency has no record of receipt of the tax returns or other financial information from the sub S. Corporation. It has only the wage information from Petitioner and his spouse as employees of the sub S. Corporation but not the business income information. As Petitioner believed that he had supplied that information for the time period involved here the record was left open to allow an opportunity to see if

Petitioner could find documentation of submission of that information. He did contact the Division of Hearings and Appeals to indicate that he did not have any of those records.

I am persuaded that the self-employment information was never submitted to the agency so that it could be budgeted for purposes of determining BadgerCare+ eligibility and premiums levels. This is based on three things: first, the application and renewal forms do not make any mention of the self-employment income; second, the agency has no record of receipt of that information and, third, Petitioner has no records indicating that that information was submitted. The calculations as to eligibility and premiums levels as reflected in Exhibit # 4 four were not challenged here thus I conclude that the agency correctly determined that there is a BadgerCare+ overpayment of \$3945.00.

CONCLUSIONS OF LAW

The county agency correctly determined that Petitioner was overpaid \$3945 in BadgerCare+ benefits during the periods noted at Finding # 2 due to Petitioner's failure to report that self-employment income which resulted in household income above the BadgerCare+ income eligibility limits for a group of four.

THEREFORE, it is

ORDERED

That this appeal is dismissed

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of October, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Public Assistance Collection Unit, DWSPACU@wisconsin.gov - DWSPACU@wisconsin.gov
Division of Health Care Access and Accountability, DHSDHADHCAA@Wisconsin.gov -
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Enrollment Services



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The preceding decision was sent to the following parties on October 24, 2012.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability