



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MOP/143152

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waushara County Human Services in regard to Medical Assistance, a hearing was held on September 27, 2012, at Wautoma, Wisconsin.

The issue for determination is whether the Department erred in calculating a \$12,941.19 BadgerCare Plus overpayment for the period of 10/1/11 to 5/31/12.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Roxanne Binkowski
Waushara County Human Services
205 W Elm
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waushara County. He lives on [REDACTED].

2. Petitioner applied for FoodShare and BadgerCare+ benefits on October 14, 2011. At that time he reported that his household was a two-person household comprised of himself and his daughter KM who was 17 years old. [REDACTED] is KM's mother.
3. KM resides with [REDACTED] on [REDACTED]. She sleeps regularly at the home of [REDACTED]. She keeps her clothing and belongings at [REDACTED]'s home. Her driver's license lists the [REDACTED] home as her residence. KM stops at petitioner's house several times each week to feed horses or to sometimes visit her father and stay for dinner. She stays overnight no more than one night per week. She has had friends over at petitioner's home on only on e occasion.
4. In April 2012, O'Brien and Associates conducted an investigation and concluded that KM does not reside with petitioner and that petitioner's household is a one -person household.
5. On or around June 12, 2012, the Department sent petitioner a Medicaid/Badgercare Notice of Overpayment indicating that petitioner was liable for a \$12,941.19 overpayment for the period of 10/1/11 to 5/31/12.
6. Petitioner filed a timely appeal.

DISCUSSION

BadgerCare+ is an expansion of the Wisconsin MA program designed to provide coverage to children under age 19 and their parents. Wis. Adm. Code, §DHS 103.03(1)(f). To be eligible for BadgerCare+, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Adm. Code, §DHS 103.03(1)(f)1. Parents in a BadgerCare+ household are eligible only if the total household income is no greater than 200% of the federal poverty level (FPL). There is no income limit for BadgerCare+ eligibility for children but there may be a premium for them.

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 BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Under BC+ policy, only one parent can receive BC+ as a caretaker if the parents are separated and have joint placement. BC+ Handbook, App. 2.2.1.2. If one of the parents has the child more than 60% of the time, that parent is considered the primary parent. If the parents have the child between 40-60% of the time, the Handbook provides a procedure to determine which parent will be considered the BC+ parent.

Generally the procedure to determine which parent is considered the BC+ parent only arises if both parents apply for the program. That is because the Handbook, App. 2.2.1.2, reads as follows:

If the child is not residing with both parents at least 40% of the time, only the parent with the greater percentage of the placement time may apply on behalf of the child and/or for him or herself as the caretaker relative of that child.

If only one parent of a child is applying for BC+ and he or she is stating that they have placement of the child for at least 40% of the time, accept the declaration unless it is questionable.

The policy clearly says that a parent must have 40% placement to be eligible for BC+ as a caretaker; if there is not 40% placement, the parent cannot even apply for BC+ as a caretaker parent.

In this case, KM was no more than a visitor to her father's residence. She did not sleep there more than occasionally. She did not keep belongings there or have friends over more than one time. She stopped by during the days to feed horses and, sometimes, she would stay to visit her father and have dinner. This does not amount to 40% placement. Her father was not eligible to apply for BC+ and was ineligible for the benefits he did receive.

The Department explained that the amount of overpayment was determined to be the sum of the capitation rates paid to the HMO providing coverage to petitioner as well as the amounts paid out to providers during his period of coverage. Petitioner did not dispute the calculations and admitted to having spine surgery during the period which likely accounts for the large overpayment amount.

CONCLUSIONS OF LAW

The Department did not err in calculating a \$12,941.19 overpayment for the period of 10/1/11 to 5/31/12.

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, Room 651, 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 Madison,
Wisconsin, this 4th day of October, 2012

John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals

c: Waushara County Human Services - email
Department of Health Services - email



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The preceding decision was sent to the following parties on October 4, 2012.

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