



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MOP/144277

PRELIMINARY RECITALS

Pursuant to a petition filed October 01, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Lincoln County Department of Social Services in regard to Medical Assistance, a telephone hearing was held on November 21, 2012.

The issue for determination is whether respondent erred in determining an overpayment of Medical Assistance benefits to petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Beulah Garcia

Lincoln County Department of Social Services
607 North Sales Street
Suite 201
Merrill, WI 54452

ADMINISTRATIVE LAW JUDGE:

Peter McCombs

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Lincoln County.
2. Petitioner's 3-member household received Medical Assistance through the BadgerCare Plus program during the time period of October, 2011, through January, 2012.

3. A State Wage Match in June of 2012, alerted respondent to an unreported increase in petitioner's income. The matter was referred to O'Brien & Associates, and a Medicaid/BadgerCare Overpayment Notice was subsequently sent to the petitioner identifying an overpayment of \$1,638.11 during the time period of October, 2011 through February, 2012. Exhibit 4(B3).
4. At hearing respondent noted that it had found errors in its overpayment calculation, and the overpayment was re-calculated. The revised overpayment balance is \$850.87, and it covers the period of October, 2011 through February, 2012. Exhibit 4(I1).

DISCUSSION

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+ rules the income limit for caretaker parents is 200% of the poverty level. BC+ Handbook, Appendix 16.1. That amount for a three-person household in 2011 was \$3,088.34; commencing in February of 2012, it rose to \$ 3,181.67. BC+ Handbook, § 50.1. There is no limit for a child, but if household income is over 200% children are eligible for the BC+ Benchmark Plan with a premium. BC+ Handbook, § 1.1.1. In addition, caretaker parents who are self-employed also can be eligible for the Benchmark Plan if income is over 200% of poverty. Id.

Petitioner had received notice of the requirement that she report if her income exceeded \$3,088.34. Exhibit 4(D). The State Wage match showed income exceeding the program limits. MA rules require recipients to report changes in income that could affect benefits. Wis. Adm. Code, §DHS 102.01(6); BC+ Handbook, § 27.3. While petitioner noted that her pay stubs are all electronic, that does not absolve her of her obligations to update respondent in this situation.

I acknowledge that petitioner's failure to report the change was an honest error, but the rules for recovering overpayments do not distinguish between intentional withholding of information as opposed to honest errors of omission. The Department is required to recover MA payments if the recipient fails to report a change that could affect benefits. It does not have to be intentional. If it is intentional the person could be charged with criminal fraud along with having to repay the overpayment. This instance was not intentional and there is no suggestion that any fraud was committed. Nevertheless, the agency must recover the overpayment.

Respondent conceded that it erred in establishing the original overpayment. Ms. Garcia, testifying for the respondent, noted that the initial overpayment claim included amounts related to dates outside of the overpayment period. *See*, Exhibits 4(B5) and (B6). There was also an error related to respondent's application of an incorrect Federal Poverty Level income limit. *Id.* Respondent confirms that these errors have been corrected, yielding a new overpayment figure in the amount of 850.87. This matter will be remanded to the respondent to re-determine the overpayment in accordance with Exhibit 4(I1), New Overpayment Calculations.

CONCLUSIONS OF LAW

1. Petitioner was overpaid BC+ because she failed to report an increase in income timely.
2. Respondent's initial calculation of BC+ overpayment was in error due to the inclusion of amounts disbursed outside of the overpayment period and to a misapplication of the 2011 and 2012 Federal Poverty Level income limits.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to re-determine overpayment claim no. [REDACTED] against petitioner, to remove any parts of the overpayment pertaining to benefits outside of the overpayment time period of October, 2011, through February, 2012. The re-determination shall also properly apply the Federal Poverty Level income limits applicable to the overpayment time period. The county shall take this action within 10 days of this decision, and new Notice of Overpayment (with appeal rights) and Overpayment Worksheets shall be sent to petitioner. If petitioner disagrees with the re-determined overpayment, she may again seek a hearing on the matter, subject to applicable and noticed time constraints.

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 served and 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 Madison,
Wisconsin, this 14th day of December, 2012

\sPeter McCombs
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 December 14, 2012.

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