



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MOP/144509

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 12, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on November 28, 2012, at Viroqua, Wisconsin.

The issue for determination is whether the Department erred in its determination of a \$4,254.14 medical assistance overpayment against petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Tom Miller

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Vernon County.
2. Petitioner is a beneficiary under the BadgerCare Core Program. Her husband [REDACTED] is also named on the case.

3. ██████ was added to the case in August 2010.
4. The petitioner failed to report pension income for ██████. The Program never calculated his pension income as part of the household income.
5. With his pension income counted, the household is over the income limit.
6. In September of 2012, the Program learned of the pension income and added the income to the household income. The household was no longer eligible.
7. The Program determined an overpayment for the period from August 2012 when ██████ was added to the case until the case was closed. The total overpayment determined by the Department was \$4,254.14.
8. Petitioner filed a timely appeal.

### 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. ...

*(emphasis added)*

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

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.

*BCPEH*, §28.1.

But, it is also clear in the program rules that if the agency is responsible for the error then the overpayment is not recoverable:

### ***28.3 Non-Recoverable Overpayments***

Do not initiate recovery for a BC+ overpayment if it resulted from a non-member error, including the following situations:

1. The member reported the change timely, but the case could not be closed or the benefit reduced due to the 10-day notice requirement.
2. Agency error (keying error, math error, failure to act on a reported change, etc).
3. Normal prospective budgeting projections based on best available information.

In this case, petitioner does not dispute that the household was ineligible. Neither does she dispute the amount of the overpayment, although she stated at hearing that the amount “exceeds what’s fair and just.” Petitioner argues instead that she did disclose the pension, but that the agency did not budget that income to the household. She essentially argues that this is an agency error that she should not be required to pay back stating at hearing that “I think the agency is just as culpable as I am for the error .” She states that “[t]his amount presents a hardship for me and my household.” I do find that petitioner failed to report the income as I cannot believe that the case worker would have simply ignored such a substantial sum of income. Petitioner’s request for hearing and the testimony of her husband obfuscates the issue with talk about prenuptial agreements and marital property. Based on the testimony of both petitioner and her husband, I am inclined to believe that they made their own determination as to what was considered income and reported only what believed they needed to report.

### **CONCLUSIONS OF LAW**

The Department did not err in its determination of a BC Core Plan overpayment in the amount of \$4,254.14 for the period from October 1, 2011 to August 30, 2012.

**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 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 18th day of December, 2012

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\sJohn 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 December 18, 2012.

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