



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MOP/144963

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 2012, under Wis. Stat. § 49.45(5), to review a decision by the La Crosse County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on November 28, 2012, by telephone.

The issue for determination is whether petitioner was overpaid MA because his self-employment income was not budgeted.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Tom Miller

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

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner receives BadgerCare Plus (BC+) MA along with his daughter. In September, 2010 he purchased a bar through his Subchapter S corporation. He did not report income from the business to the economic support worker.

3. The agency discovered the ownership interest in early 2012. An investigation confirmed that petitioner was the owner of the corporate entity that purchased the bar.
4. The agency obtained petitioner's 2011 income tax returns. The return showed a yearly income of \$16,225 before depreciation.
5. The agency divided that income by twelve to obtain monthly income. With the monthly income of \$1,352 added to petitioner's BC+ budget, it was determined that petitioner was overpaid \$2,367.68 in MA between December 1, 2011 and September 30, 2012, claim nos. [REDACTED] and [REDACTED]. The agency notified petitioner of the overpayment on October 20, 2012.

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 two-person household is \$2,521.67. Handbook, App. 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. Handbook, App. 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.

A Subchapter S corporation is considered a self-employment entity. Handbook, App. 16.4.3. State MA law requires the agency to add depreciation back in when determining self-employment income. See Wis. Admin. Code, §DHS 103.07(2)(a). The agency should take net yearly earnings, add back in depreciation, and then divide by twelve. See also the self-employment worksheets found in the BC+ Handbook, App. 16.4.3.2.2. To be eligible for the Benchmark Plan the self-employed parents' income must drop below 200% if poverty if depreciation is excluded from the budget. Handbook, App. 19.2.

The agency must use the prior year's income method unless there is a change in the business circumstances. Handbook, App. 16.4.3.2.4. One example given of such a change is: "Sales, for an unknown reason, are consistently below previous levels. The relevant period may vary depending on the type of business (consider normal sales fluctuations)."

The first issue is whether petitioner reported the purchase of the bar. He testified that he told his worker about it but that he was not being paid until it was profitable. I cannot find as a fact that he told her about the purchase of the bar, however. Petitioner filed a renewal application on November 30, 2012 that included no mention of the bar. There are no case notes in 2010 mentioning the bar. Petitioner's worker, when she discovered the ownership in March, 2012, wrote in case notes "No self -employment income was ever reported on this case." This worker was the same person who handled petitioner's case in 2010. I know that standard procedure for a worker would be to request self-employment report forms when told of the purchase of a new business. The worker would not simply respond "Tell me when you start to make money."

I thus find that petitioner did not report the purchase of the bar. I believe it likely that he did not do so because he considered it to be a non-money maker, but he also was unaware of the requirement that depreciation be added back in.

Upon getting the 2011 tax returns the agency correctly determined monthly income using the method set out by the Department. Based upon that determination the agency correctly determined the overpayment based upon premiums that would have been owed and MA payments that would not have been paid.

Petitioner testified that his business is not going as well this year. However, he began to pay himself \$1,000 per month in July. I cannot find that there has been a change of circumstances that would warrant using a method other than the 2011 income being divided by twelve. Petitioner has not shown that sales are consistently below the prior year.

CONCLUSIONS OF LAW

The agency correctly determined a BC+ overpayment because petitioner failed to report income from self-employment.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 3rd day of December, 2012

\sBrian C. Schneider
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 3, 2012.

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