



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/142654

PRELIMINARY RECITALS

Pursuant to a petition filed July 27, 2012, under Wis. Stat., §49.45(5), to review a decision by the Dane County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on May 16, 2013, at Madison, Wisconsin. Hearings set for August 30, September 27, and October 30, 2012 were rescheduled at the petitioner's request. In addition the hearing was postponed six months by agreement of the parties to allow petitioner to provided information.

The issue for determination is whether the agency correctly determined an MA overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

By: [REDACTED] [REDACTED] (Husband)

Respondent:

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

By: Asst. Corp Counsel Marcia MacKenzie
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner received BadgerCare Plus (BC+) MA for her six-person family from May, 2006 through September, 2011. The family reported minimal self-employment income over the time period. In September, 2011, the county worker requested an investigation because the family's

- monthly expenses exceeded income by substantial amounts and had done so over the entire period of eligibility.
3. The worker also requested that petitioner and her husband provide copies of bank and business statements for the prior twelve months. Bank statements and PayPal records were provided on September 27, 2011 and they showed income to be substantially higher than what was reported by the household.
 4. On March 16, 2012 the county requested PayPal and bank account information from February 1, 2008 through August 31, 2010. Exhibit D, page 21. PayPal was requested because the self-employment business utilized PayPal for customer payments. No records were provided to the county.
 5. On April 19, 2012, the county sent the household another letter asking for similar records back to May 1, 2006. Exhibit D, page 22. A follow-up letter was mailed on May 17, 2012. No documentation was provided.
 6. In June, 2012, the county calculated BC+ and FoodShare (FS) overpayments. It was determined that although income was under-reported there was no BC+ overpayment for 2010 and 2011 although there was a substantial FS overpayment. For 2010 and 2011 the overpayment calculations utilized the PayPal and bank account records that the family provided on September 27, 2011.
 7. Because no records were provided for 2006 through 2009 the county determined that all BC+ and FS paid must be considered an overpayment.
 8. Notices of the overpayments were mailed on June 18, 2012. The total BC+ overpayment was \$25,051.19 for the period May 1, 2006 through December 31, 2009. See Exhibit A, page 2 for a list of the overpayment claims; the overpayments are separated into time periods with different claim numbers.
 9. Petitioner appealed the overpayment timely. In negotiations with petitioner's attorney and later with petitioner after the attorney left the case county representatives continued to request account information for the period May 1, 2006 through August, 2010. No additional information was received except for amended tax returns without supporting documentation. The amended returns were not filed with the IRS.
 10. The family did provide verification of mortgage and tax payments made, but it did not provide PayPal or bank account verification for the years in question.

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 six-person household currently is \$5,265. Handbook, App. 50.1. In 2006 that amount was \$4,466.77. BEM/DWS Operation Memo no. 06-08, dated 1/31/06. 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.

For 2010 and 2011, using the best evidence available, the county found no BC+ overpayment for the household. However, the county considered all BC+ payments to be overpaid for the years before that because the family did not provide requested account information despite repeated requests. As it turns out the finding for 2010 and 2011 might be incorrect because, during the pendency of the hearing, petitioner reported that her husband's mother "loaned" him \$11,100 in 2010 and \$10,800 in 2011, none of which was reported and none of which is expected to be repaid.

The issue is whether the agency can claim that all MA paid on behalf of the family from 2006 through 2009 can be considered an overpayment because the family has not provided account information for that period. Petitioner argued that the request was onerous and would result in expensive copying expenses. That argument is weakened by two factors. First, petitioner was able to provide the information for 2010 and 2011 within days after it was requested by the county worker. Second, the records provided for those two years show without question that the family substantially under-reported income to the county, and thus the agency has every reason to believe that records for the prior four years also would show substantial under-reporting.

After weighing the possibilities both ways, in the end I conclude that the county correctly established the overpayment based upon the information provided. Petitioner's response consisted of two claims. First, her husband argued that the family turned over everything requested. It is evident, however, that they did not. While it is true that they offered to allow the agency to review their PayPal account online, that is not the same as providing the records (and also is apparently unlawful for reasons that were not disputed).

Second, petitioner's husband cited Exhibit G as the self-employment net income over the years. However, I cannot say that petitioner's records or the tax returns are credible because the income is substantially less than the PayPal income shown in 2010 and 2011. At no time during the hearing did petitioner's husband even attempt to show that the county's calculations of overpayments for 2010 or 2011 were erroneous. If those net incomes were inflated by the county, petitioner could have shown where mistakes were made by the county. She did not even attempt to do so. With that in mind, I have no way of knowing if the net incomes shown by petitioner from the prior years were accurate. Without any business records from those years, the county had no choice but to assume that all BC+ issued were done so erroneously. I thus must conclude that the BC+ overpayment of some \$25,000 was determined correctly.

I will discuss the issue I had with this result. We know that using the 2010-2011 records turned over to the county that showed higher than reported income, the county determined no BC+ overpayment for

those years. Thus it could be surmised that if records for 2006-2009 were turned over, they would show no overpayment for those years. In the end I cannot make that leap. An MA recipient has the duty to report income accurately. Thus if the reported income is questionable, it is the recipient's burden to support his or her reports. In this case petitioner has provided nothing to support income claims from 2006 through 2009 except for unfiled tax returns without supporting documentation. Because petitioner did not provided supporting documentation to show that the household was eligible for BC+ from 2006-2009, I cannot fault the county for concluding that all BC+ paid during that period was overpaid.

Finally, petitioner's husband testified that the family turned records over to their attorney and that HE failed to turn the records over to the county. First, they had months to turn over the records before they had an attorney and they did not do so. Second, Atty. Menendez ceased representation two months before the hearing and returned the records to petitioner. Agency personnel were willing to review records right up to the date of the hearing. The failure to turn over the requested records falls squarely on petitioner and her husband.

CONCLUSIONS OF LAW

All BC+ issued on behalf of petitioner and her family were overpaid because petitioner failed to provide information that would show that the household was eligible, especially when it is clear that the household under-reported income in 2010 and 2011.

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 29th day of May, 2013

\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 May 29, 2013.

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