



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]

DECISION

MOP/143368

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 22, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on December 18, 2012, at Neenah, Wisconsin. With petitioner's consent, the record was held open to allow for the submission of further documentation by the parties. Respondent submitted additional information on December 21, 2012; petitioner submitted additional information on January 2, 2013.

This appeal arises following a prior Fair Hearing regarding an overpayment alleged by the respondent. Administrative Law Judge John Tedesco determined that, while respondent failed to establish an overpayment for the entirety of the overpayment period claimed by the respondent, an overpayment did occur during the period of July 1, 2010 to October 31, 2011. The matter was remanded to the respondent to re-determine the overpayment limited to said time period.

Following notice from respondent regarding its overpayment calculations specific to the period of July 1, 2010 to October 31, 2011, petitioner filed the instant appeal.

The issue for determination is whether respondent properly calculated an overpayment of Medical Assistance benefits to petitioner during the period of July 1, 2010 to October 31, 2011.

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: Leslie Vosters  
Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:  
Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner was a recipient of medical assistance benefits. Her Medicaid/BadgerCare (BC) benefits utilized Network Health Plan, a managed care organization (HMO). Exhibit 7.
3. During the period of period of July 1, 2010, to October 31, 2011, Petitioner’s residence was on [REDACTED], which residence was shared with [REDACTED] [REDACTED]. Petitioner did not report this residence to the Department. Petitioner did not report her household composition change or the new household income to the Department.
4. On April 9, 2012, the Department issued a Medicaid/BadgerCare Overpayment Notice to petitioner informing her that she was liable for an overpayment in the amount of \$26,149.10 for the period of February, 2008, to October, 2011. The reasons stated in the notice were petitioner’s “misstatement or omission of facts” and “failure...to report changes within 10 days.”
5. Following petitioner’s timely appeal, and a subsequent hearing on the overpayment, a decision was issued by the Division of Hearings and Appeals finding that an overpayment had occurred, but that it was limited to the period of July 1, 2010, to October 31, 2011.
6. On July 10, 2012, the Department issued a new Medicaid/BadgerCare Overpayment Notice to petitioner informing her that she was liable for an overpayment in the amount of \$10,590.67 regarding the period of February, 2008, to October, 2011.
7. Petitioner timely filed a Request for Fair Hearing on August 22, 2012, contesting respondent’s overpayment calculation.

**DISCUSSION**

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

The agency is legally required to seek recovery of incorrect BC payments when a recipient engages in a misstatement or omission of fact on a BC application, or fails to report income information, which in turn gives rise to a BC 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. ...

Wis. Stat. §49.497(1).

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

#### 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.

#### 28.2 RECOVERABLE OVERPAYMENTS.

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

1. Applicant /Member Error

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

...

#### 28.4.2 Overpayment Amount

...

If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. ...

*BCPEH*, §28.1 – 28.2, 28.4.

Recipients must report any change of circumstances that affects their benefits to the agency within 10 days. Wis. Adm. Code, § DHS 104.02(6); BadgerCare Plus Eligibility Handbook, § 27.3. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

In this case, petitioner concedes that she is liable for \$6,013.50, which is the amount of healthcare payments made on her behalf via BadgerCare. However, she specifically contests her liability for payment of the capitation rate payments claimed by the respondent. The respondent explained that the amount of overpayment was determined to be the sum of the capitation rates paid to the HMO providing coverage to petitioner plus the amounts paid out to providers during her period of coverage, in accordance with *BCPEH* §28.4.2. Petitioner responded that she had contacted her healthcare provider and was informed that providers in Winnegabo and Outagamie Counties are paid fee for services, with no capitation pay. This information from her provider would be logical, since the capitation payment would have been paid to the HMO. As noted by the respondent, the capitation rate is a payment to an HMO for each member of that HMO, regardless of the number or nature of services provided.

Medicaid/BadgerCare is insurance; it operates in similar fashion to automobile insurance. Just because you do not get into an accident or file a claim does not mean that you can get your premiums back. The capitation payments to the HMO constitute the equivalent of "premium" payments. In this case of an established overpayment, even if the petitioner did not extensively use the BC services, she is responsible for the capitation payments, in addition to the other payments made by BC on her behalf. At hearing, a question arose regarding whether or not respondent had demonstrated that it had, in fact, made the specified capitation payments on petitioner's behalf. In the documentation provided post hearing, respondent submitted petitioner's electronic 'Member Capitation History.' Exhibit 7. These pages clearly specify "total amount paid" during the period of July, 2010 through October, 2011. *Id.* I am satisfied that the Member Capitation History information confirms the payments made on petitioner's behalf to petitioner's HMO.

I have reviewed the respondent's calculations and conclude that the county agency correctly determined that the petitioner was overpaid \$10,590.67 due to her failure to report correct household composition during the overpayment period in question.

### CONCLUSIONS OF LAW

The petitioner received a total overpayment in the amount of \$10,590.67 during the period of July, 2010 through October, 2011, which she must repay.

**NOW, 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 25th day of January, 2013

---

\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 25, 2013.

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