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

In the Matter of



DECISION

MOP/145241

PRELIMINARY RECITALS

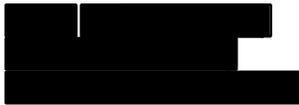
Pursuant to a petition filed November 13, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a hearing was held on December 17, 2012, at Fond Du Lac, Wisconsin. With petitioner's consent, the record was held open for a period of 10 days to allow respondent to provide further documentation.

The issue for determination is whether respondent properly assessed an overpayment of Medical Assistance – BadgerCare Plus (BC+) benefits to petitioner during the period of November, 2011 through July, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:  Bohlman

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Fond Du Lac County.

2. Petitioner received BC+ benefits, and was responsible for paying a monthly premium until approximately July, 2011.
3. On August 1, 2011, petitioner reported that her husband, [REDACTED] was no longer employed.
4. Through data exchange, respondent learned that [REDACTED] was employed by [REDACTED] and his first paycheck was received on August 19, 2011.
5. Petitioner did not report [REDACTED]'s employment with [REDACTED].
6. On or about October 3, 2012, respondent sent petitioner a Medicaid/BadgerCare Overpayment Notice, identifying an overpayment of BC+ benefits to petitioner between November, 2011, and July, 2012, in the total amount of \$2,683.80. Exhibit 2.

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.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable. *BCPEH*, §28.2

Recipients must report any change of income that affects their benefits to the agency by the 10th day of the month following the change. *BCPEH*, § 27.3. Correspondence from respondent to petitioner dated August 26, 2011, notified petitioner that:

If your household's total monthly income (before taxes) goes over \$3,725.00, you must report it by the 10th day of the next month. For example, if your income goes over the limit in June, you must report it by July 10th.

If you don't report a change listed above, and you get benefits or coverage that you aren't eligible for, you may have to pay us back. Keep in mind that if your benefits change, your reporting rules may also change.

Exhibit 3.

The county agency seeks to recover \$2,683.80 in BC+ benefits provided to the petitioner from November, 2011, through July, 2012, because it alleges that she failed to report her husband's income to the agency. Petitioner did not dispute that she did not timely report the change in income, but testified that she didn't realize that her household was still receiving BC+ benefits after November, 2011, since she had called respondent to cancel the benefits as they had begun receiving medical benefits through employer-sponsored insurance. Petitioner credibly testified that she never filed a claim with BC+ post-November, 2011, but did, in fact file claims with her employer-sponsored insurer during that time; she offers this as proof that she was unaware that her BC+ case remained open.

The respondent could not provide any evidence regarding the alleged November, 2011 phone call. Respondent noted that, in 2011, people had individual case workers who had their own voicemail. Respondent was provided 10 days to provide any documentation or other evidence which would counter the petitioner's assertion that she requested cancellation of her BC+ benefits in November of 2011. Via facsimile dated December 19, 2012, respondent informed this office that:

[Petitioner's worker] [REDACTED] [REDACTED]...has discarded her previous year's handwritten phone log. There is no other manual record of phone messages received for fall 2011.

A request was made to County Administration to obtain a copy of the digital phone records for November, 2011 for [Ms. [REDACTED]'s] extension. The county does not archive records for the prior year. ...

Exhibit 4.

Ms. [REDACTED] did not testify, so there is no first-hand contradictory evidence. Respondent has conceded that it was unable to counter petitioner's testimony of the cancellation request via documentation. Based upon this, and upon my assessment of the credibility of petitioner's testimony, I find that she requested to cancel her BC+ benefits in November of 2011. If that call had been properly acted upon, BC+ benefits would have terminated effective November 30, 2011. Therefore, I find that respondent has established an overpayment of BC+ benefits for November, 2011, due to petitioner's failure to report her husband's income. However, the agency may not recover the medical assistance benefits provided to the petitioner's household after December 1, 2011, as the error in providing said benefits is ascribed to respondent.

CONCLUSIONS OF LAW

1. The respondent has established that petitioner received an overpayment of BC+ benefits for November, 2011, due to petitioner's failure to timely notify respondent of an increase in household income.
2. The respondent may not recover any overpayment of BC+ benefits received by the petitioner from December, 2011, through July, 2012, because petitioner requested termination of her BC+ benefits in November, 2011. The overpayment during this period of time is the result of respondent's error.

THEREFORE, it is

ORDERED

That the matter be remanded to the respondent with instructions to re-determine overpayment claim no. [REDACTED] against petitioner, to remove any parts of the overpayment from the months of December, 2011, through July, 2012, because petitioner's BC+ case should have terminated on November 30, 2011. The respondent shall take this action within 10 days of this decision.

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

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

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability