FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/145242

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 Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on December 19, 2012, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of medical assistance.

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: Aaron Borreson
Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [redacted] is a resident of Eau Claire County.

2. The county agency seeks to recover $2,266.79 in BadgerCare Plus benefits provided to the petitioner from August 2011 through May 2012 because it contends she failed to report that her in household income had increased to over 200% of the federal poverty level.

3. The petitioner lives with her husband and two minor children.

4. The petitioner was an ongoing recipient of BadgerCare Plus. A July 11, 2011, notice from the State informed her that she must report by the 10th day of the next month if her gross income increased to over $3,725 per month. That notice indicated that her household income was $3,394.46. A January 12, 2012, notice also informed her that she must report by the 10 th day of the next month if her gross income increased to over $3,725 per month. That notice indicated that her household income was $3,368.91. A third notice, dated February 13, 2012, informed her that she must report by the 10th day of the next month if her gross income increased to over $3,841.66 per month. That notice indicated that at the time her household income was $3,368.91. The amount that triggered the petitioner's reporting requirement was based upon 200% of the federal poverty level for a four-person household. *BadgerCare Plus Eligibility Handbook* , § 50.1.

5. The petitioner's income from wages varied from $223.86 to $504.66 per month from August 2011 through May 2012. Her husband's income varied from $2,950 to $5,870 per month in this period. In addition, the petitioner began earning $56.17 per month from self-employment as of Janaury1, 2012, an amount that was derived from her 2011 federal income tax return.

6. The petitioner's actual monthly household income in the relevant period was as follows:

   a. August 2011 $3,955.08

   b. September 2011 $4,742.74

   c. October 2011 $5,294.36 ($5,142.90 if the petitioner's total pay from three paychecks is multiplied by .67 to make that pay the equivalent to a two-paycheck month)

   d. November 2011 $3,388..37

   e. December 2011 $3,993.36

   f. January 2012 $3,482.49

   g. February 2012 $4,422.18

   h. March 2012 $5,815.91 ($5,647.69 if the petitioner's total pay from three paychecks is multiplied by .67 to make that pay the equivalent to a two-paycheck month)

   i. April 2012 $6,169.66

   j. May 2012 $3,997.61

7. The petitioner's BadgerCare Plus premium was $167 per month from August 2011 through February 2012 and $172 per month from March through May 2012.

DISCUSSION

BadgerCare Plus provides medical assistance coverage to children under 19 and their parents or caretakers. Wis. Stat. § 49.471; *BadgerCare Plus Eligibility Handbook* , § 2.1. Unless they are pregnant, adults are ineligible if their household income exceeds 200% of the federal poverty limit. Wis. Stat. § 49.471(4)(a). Adults must pay a premium if their household income exceeds 150% of the federal poverty level; a premium must be paid on behalf of children if the household income exceeds 200% of the federal poverty level. Wis. Stat. § 49.271(1)(b). Recipients must report any change of income that affects their benefits to the agency by the 10 th day of the month following the change. *BadgerCare Plus Eligibility Handbook*, § 27.3. Two hundred percent of the federal poverty level for a four-person household was

$3,725 in July 2011 and rose to $3,841.66 as of March 1, 2012. *BadgerCare Plus Eligibility Handbook* , § 50.1.

The petitioner lives with her husband and two minor children. The county agency reviewed the petitioner's case in July 201 1 and again in January 2012. Using her and her husband's two most recent paystubs for wages and adding $56.17 from self-employment as of January 1, 2012, an amount derived from their 2011 federal income tax return, the agency determined that their monthly income was $3,394.46 as of July 2011 and $3,368.91 as of January 2012. Both the July and January determinations included notices instructing the petitioner to report by the 10 th day of the following month any change that caused their income to exceed $3,725; after the federal poverty level increased, the agency sent another notice in March instructing her to report any change that caused their income to exceed $3,841.66. *See exhibits 3 and 6 – 8.*

The two pay periods used to determine the petitioner and her husband's income turned out to not accurately reflect that income, which varied considerably from month to month. The petitioner's income from wages varied from $223.86 to $504.66 per month from August 2011 through May 2012 and her husband's varied from $2,950 to $5,870 in this period. Medical assistance rules state that the Department "may" recover any overpayment that occurs because 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 [BadgerCare].
> 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.

Wis. Stat. § 49.497(1).

The county agency seeks to recover $2,266.79 in BadgerCare Plus benefits provided to the petitioner from May through August 2012. It based this overpayment on the petitioner's actual household income each month during this period, as is required by the *BadgerCare Plus Handbook,* § 28.4.2. In the months she still would have been eligible, it subtracted the premium she paid from the additional premiums she would have still been responsible for. In the months she should have been ineligible, it subtracted the premiums she paid from the capitation fee the program paid for her benefits. Thus, the overpayment was determined by subtracting the premiums she actually paid from the sum of the premiums she should have paid plus the capitation fees the Department should not have to have paid. This method is consistent with the instructions in the *BadgerCare Plus Handbook,* § 28.4.2. The petitioner's actual monthly income is found in *Finding of Fact No. 6* and *exhibit 2;* the agency's overpayment calculations are found in *exhibit 1.* The petitioner does not challenge the information in either.

What she does challenge is the agency's authority to recover an overpayment under the circumstances found here. She testified that she provided all of the information requested of her and points out that the overpayment would create a severe hardship on her family, which is still recovering from her husband 's loss of his job as a pilot a few years ago. I find no evidence that she intentionally misled the agency or hid evidence of her income. As noted, her household income fluctuated wildly. Even during the alleged overpayment period there were months when that income fell below 200% of the federal poverty level and others when it barely exceeded this amount. The agency did have the year-to-date totals for each spouse, so I question why it did not follow the instructions for determining fluctuating income found in the *BadgerCare Plus Handbook,* § 16.6, and average the income over the entire period of eligibility

rather than over this relatively short period. However, while this may have led to a slightly higher premium, it does not appear that it would have left the petitioner and her husband ineligible by raising their income over 200% of the federal poverty level.

Regardless, the petitioner was instructed several times in writing that she must report her income if it exceeded a specific amount. I understand why she may have overlooked this instruction that was somewhat buried in a multiple-paged notice, but the rules concerning an overpayment only require that county prove that she failed to report information that affected her benefits, not that she intentionally did so. About every two weeks both she and her husband received paystubs indicating exactly what their gross earnings were during that period. Whenever that income exceeded the amounts given in the various notices, they had a duty to report it to the agency. (There was also a small amount of self-employment income that had to be included, but this never altered whether their monthly income exceeded 200% of the federal poverty level.) Because they did not report these changes, they must repay the benefits they were not entitled to.

CONCLUSIONS OF LAW

The petitioner must repay the additional $2,266.79 in BadgerCare Plus benefits her household received because she did not report increases that caused her household income to exceed 200% of the federal poverty level.

THEREFORE, it is **ORDERED**

The petitioner's 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 8th day of January, 2013

\sMichael D. O'Brien
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 8, 2013.

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