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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MOP/145548

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 26, 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 January 03, 2013, at Fond Du Lac, Wisconsin.

The issue for determination is

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: Deb Bohlman

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

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County who resides with his wife and their minor child. Petitioner shares custody of his three other children.
2. The petitioner applied for renewal of BadgerCare Plus (BCP) benefits on or about April 8, 2011. Petitioner's wages from [REDACTED] were verified via an Employer Verification of Earnings form (EVFE), and petitioner's wife's earnings were verified via paystubs. Exhibit 5.

3. Petitioner’s group size increased to 4 with the addition of petitioner’s son in November, 2011.
4. The county agency seeks to recover \$2,816.61 in BCP benefits provided to the petitioner from June, 2011, through May, 2012, because it contends he failed to report that his household income had increased to over 200% of the federal poverty level.
5. The petitioner was an ongoing recipient of BadgerCare Plus. An April 11, 2011, notice from the respondent relayed the requirement that BCP recipients must report by the 10<sup>th</sup> day of the next month if gross household income increased to over \$3,088.34 per month. That notice indicated that their current household income was \$2,609.14. Exhibit 5. A December 16, 2011, notice repeated that recipients must report by the 10<sup>th</sup> day of the next month if the household’s gross income increased to over \$3,725.00 per month. That notice indicated that household income was \$2,027.43. Exhibit 5. The amount that triggered the petitioner’s reporting requirement was based upon 200% of the federal poverty level for a three, and later, a four-person household. *BadgerCare Plus Eligibility Handbook*, § 50.1.
6. Actual wage records indicate the following gross earned income for the petitioner and her husband:

June, 2011	\$5,540.29
July, 2011	\$9,003.14
August, 2011	\$6,876.53
September, 2011	\$7,165.73
October, 2011	\$4,482.76
November, 2011	\$3,415.59
December, 2011	\$4,993.98
January, 2012	\$3,946.55
February, 2012	\$3,098.85
March, 2012	\$4,876.53
April, 2012	\$3,629.47

7. Petitioner failed to timely report to the county agency overtime pay that he earned during the overpayment period. Respondent determined that petitioner was not eligible for BCP benefits due to household income exceeding program limits from June 1, 2011 – January 31, 2012, and from April 1, 2012 – May 31, 2012. Exhibit 1.
8. On October 24, 2012, the county agency issued a Medicaid/BadgerCare Overpayment Notice to the petitioner, advising that she had been overpaid \$2,816.61 during the period of June 1, 2011, through May 31, 2012. Exhibit 2. The overpayments were identified as:

Claim No. [REDACTED]	June 1, 2011-January 31, 2012	\$ 586.65
Claim No. [REDACTED]	June 1, 2011-January 31, 2012	\$2030.96
Claim No. [REDACTED]	April 1, 2011-May 31, 2012	\$ 49.00
Claim No. [REDACTED]	April 1, 2011-May 31, 2012	\$ 150.00

**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<sup>th</sup> day of the month following the change. *BadgerCare Plus Eligibility Handbook*, § 27.3. Two hundred percent of the federal poverty level for a three person household was \$3,088 in June, 2011, and rose to \$3,181 in March, 2012; for a four-person household it was \$3,725 in June 2011, and rose to \$3,841.66 as of March 1, 2012. *BadgerCare Plus Eligibility Handbook*, § 50.1.

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).

During the January 3, 2013, hearing and while the record was held open, the county agency representative presented a strong case that petitioner received BCP benefits in excess of that for which he was eligible, due to petitioner's failure to report to the county agency his overtime income resulting in total household income above the BCP income eligibility limits. The petitioner did not contest the veracity of the wage amounts determined by respondent, as confirmed by State Wage records. See, Finding of Fact 6, above.

Petitioner argued that he and his wife submitted all of the information requested of them, and never attempted to hide anything. Petitioner testified that his employer offers overtime on a last-minute basis, so it is impossible for him to ever estimate if he will even be provided overtime opportunities. Respondent counters that petitioner was notified numerous times of the reporting responsibilities, i.e., recipients of BCP benefits are required to report changes no later than the 10<sup>th</sup> day of the next month after the change. While it may not be uncommon for such standard language to pass overlooked on agency form letters, it is, nonetheless, a requirement of the BCP program. See, *BadgerCare Plus Eligibility Handbook*, § 12.1. Petitioner indicated that he feels that there was nothing that he could have done to prevent this overpayment from occurring, but that ignores the fact that he had received numerous notices from the respondent indicating the income that was being counted for his household, and furthermore he was obviously aware that he was working a good deal of overtime. It would appear that on at least 4 occasions, the monthly household income was at least double the amount that was being utilized by the respondent.

Petitioner also raised the issue of having full time placement of his three additional children, while their mother was incarcerated. Electronic Case Comments indicate that petitioner's wife called to report the children in their care, in April of 2010. Despite certain efforts, respondent was unable to verify the placement of the children or the fact that their mother was in jail. Petitioner never followed up with the submission of any proof regarding the placement, and in any event, this occurred in 2010, approximately one year prior to the commencement of the overpayment period at issue here.

Finally, petitioner argues that he simply cannot afford to repay the overpayment assessed against him. I can empathize with his situation, and agree that there is no evidence of any intentional effort to obtain BCP benefits unlawfully. I certainly understand that addressing this debt can be difficult, and even impossible. However, administrative law judges do not have the power to address issues of equity. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. We are required to apply the law as written.

Based on the above hearing record, I conclude that the county agency is correctly seeking repayment of a BCP overpayment in the total amount \$2,816.61 during the period of June 1, 2011, through May 31, 2012, due to the failure to report to the county agency petitioner's overtime income resulting in total household income above the child care income eligibility limits

### **CONCLUSIONS OF LAW**

The petitioner must repay the additional \$2,816.61 in BadgerCare Plus benefits his household received because he did not report increases that caused his 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 12th day of February, 2013

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\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 February 12, 2013.

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