



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MOP/145602

PRELIMINARY RECITALS

Pursuant to a petition filed November 27, 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 scheduled for January 3, 2013. Following petitioner's rescheduling request, a hearing was held on January 23, 2013, at Fond Du Lac, Wisconsin.

The issue for determination is whether respondent has correctly established an overpayment of Medical Assistance benefits to petitioner.

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 (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. The county agency alleges that the petitioner was overpaid \$683.14 in medical assistance benefits from March, 2012, through July, 2012.

3. The petitioner's eligibility was based, in part, on income information provided by petitioner's employer via an Employer Verification of Earnings form. Exhibit 2.
4. Actual wage information was subsequently obtained, and the respondent's agent, O'Brien and Associates, determined that petitioner's income exceeded eligibility limits from March, 2012, through July, 2012. Id.

DISCUSSION

The department may recover any overpayment of medical assistance 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).

Recipients must report any change of circumstances that affects their benefits to the agency within 10 days. Wis. Admin. Code, § DHS 104.02(6); BadgerCare Plus policy interprets this to mean that a recipient must report the change by the 10th day of the month after his income exceeds 100%, 150%, 200%, 250%, or 300% of the federal poverty level. *BadgerCare Plus Handbook*, § 27.3. If the reported change affects eligibility, the agency must send a notice to the recipient within 10 days. Wis. Admin. Code, § DHS 103.09(1). Benefits continue until the end of any month in which the person remains eligible. Wis. Admin. Code, § DHS 103.09(4).

The petitioner received BadgerCare Plus, which 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). The agency contends that the petitioner's employer underreported petitioner's income because the income verification sent by his employer did not accurately represent the petitioner's commission income. This led to his alleged receipt of \$683.14 in BadgerCare Plus benefits that he was not entitled to from March, 2012, through July, 2012.

It is a well-established principle that a moving party generally has the burden of proof to establish that the action it took was proper given the facts of the case, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to recover benefits from the petitioner, the county agency is the moving party.

At hearing the respondent presented a printout by petitioner's employer showing all income payments to petitioner between December, 2011 and July, 2012. Exhibit 3. The printout demonstrated that petitioner's commission payments were higher than anticipated by petitioner's provider on the EVFE.

However, in testimony at hearing, the respondent's representative indicated that she did not agree with respondent's own agent's overpayment determination. Specifically, respondent's representative testified

that it felt that the overpayment should be limited to May, 2012 – July, 2012. She additionally testified that petitioner was not sent the 150% notice, and was only sent the 200% notice.

This is clearly a case where if there is an overpayment, that amount varied from month to month depending upon the changes in monthly income, when the petitioner was required to report the change, when the agency was required to act upon it, and how much was paid in benefits each month on behalf of the recipient. Under these circumstances and in light of my inability to line up respondent's testimony regarding what would be the proper overpayment period with the calculations spreadsheet prepared by O'Brien & Associates, it is impossible for me to verify the amount of the overpayment. Accordingly, I must find that the agency has not met its burden of proof and thus cannot recover the alleged overpayment.

CONCLUSIONS OF LAW

The Department has not proved by the preponderance of the credible evidence that the petitioner was overpaid \$683.14 in medical assistance benefits from March, 2012, through July, 2012.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it rescind the petitioner's liability for the overpayment identified as Claim No. [REDACTED]

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 22nd day of February, 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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 22, 2013.

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