



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/145646

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 30, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance, a hearing was held on May 01, 2013, at Green Bay, Wisconsin.

The issue for determination is whether petitioner is liable for a \$56,871.10 medical assistance overpayment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Judy Steffens

Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner resided with [REDACTED] [REDACTED] during all times pertinent to this appeal.

3. In DHA Case No. MOP/137112, Administrative Law Judge Gary Wolkstein made the following findings of fact:

- 1) Petitioner (CARES # [REDACTED]) is a resident of Brown County who resides with her five children at [REDACTED]. The petitioner's boyfriend is [REDACTED] V. [REDACTED]. The petitioner has one daughter, DL, who is not the child of [REDACTED] [REDACTED].
- 2) [REDACTED] V. [REDACTED] (age 39) is the father of four of petitioner's children (WS, RS, US, and SS).
- 3) The petitioner has been receiving BadgerCare benefits in Wisconsin during the period of July, 2008 through July, 2011. See Exhibit 10.
- 4) During September, 2006, petitioner inaccurately reported to the county agency that [REDACTED] [REDACTED] was no longer residing with her and should be removed from her household. Mr. [REDACTED] was removed from petitioner's household as of December, 2006.
- 5) The petitioner works as a supervisor during night shift (11 p.m. to 7 a.m.) at [REDACTED] [REDACTED]. She earned about \$12.95 per hour and worked 40 hours per week since July 29, 2009. See Exhibit 14.
- 6) The petitioner worked at [REDACTED] from June 17, 2005 to July 21, 2008. See Exhibit 14 which documents her wages during that period. Petitioner also worked at [REDACTED] from July 18, 2008 to August 14, 2009 which is also documented in Exhibit 14.
- 7) Mr. [REDACTED] was employed during the day shift by [REDACTED] ([REDACTED] [REDACTED]) as of December, 2006. He generally earned about \$13.25 per hour for 40 hours per week. The employer confirmed his wages in Exhibit 5. He reported to his employer that his address is [REDACTED].
- 8) Mr. [REDACTED] became eligible for employer funded health insurance benefits for himself and his four children as of March 1, 2008. See Exhibit 5. Neither petitioner nor Mr. [REDACTED] reported to the county agency that Mr. [REDACTED] obtained employer health insurance that began March 1, 2008 for himself and his four children.
- 9) The petitioner and [REDACTED] [REDACTED] registered multiple vehicles with the Department of Motor Vehicles at the same joint address of [REDACTED]. See Exhibit 7.
- 10) Mr. [REDACTED]'s credit report from TransUnion, his DWD records, and the child support agency documents indicate his address to be [REDACTED]. See Exhibits 8, 9 and 4.
- 11) Mr. [REDACTED] admitted in a written statement to Brown County Sheriff's Sargent [REDACTED] [REDACTED] that "he and [REDACTED] had been together for 17 years after meeting in Texas." See Exhibits 1 and 2.
- 12) The petitioner failed to report during her twice yearly reviews or six month report forms (SMRFs) for FS and childcare benefits (CC) (and once yearly Medicaid report) that Mr. [REDACTED] moved back into her home after December, 2006. See Exhibits 11 - 13.
- 13) The Medical Assistance (MA) 200% Federal Poverty Limit (FPL) income eligibility limit changed for an MA household of seven during periods of petitioner's extended MA overpayment period: a) August, 2008 - \$5,333.33; b) March, 2009 - \$5,545.00; c) March, 2011 - \$5,635.00. The petitioner's household was above the 200% MA income limit during some months of the overpayment period. See detailed Medical Assistance Overpayment Summary.
- 14) The petitioner's household's total income was over 150% of FPL during the entire BC overpayment period, and petitioner was therefore required to report by June, 2008 her total household income regarding her BC premiums for continued BadgerCare Plus eligibility.
- 15) The MA income limit of 150% of FPL for an MA household of seven at which a BadgerCare Plus premium is due changed during the petitioner's MA overpayment

period: a) August, 2008 - \$4,000; b) May, 2009 - \$4,158.75; and March, 2011 - \$4,226.25.

- 16) The petitioner and her daughter, DL, received MA overpayments due to: a) the petitioner's income ineligibility for some months in which she received benefits paid by Medicaid for herself or her daughter; and b) petitioner did not pay her required BadgerCare Plus premiums for herself or her daughter during the period of August, 2008 through July, 2011. See detailed Medical Assistance Overpayment Summary.
  - 17) [REDACTED] and his four children in common with petitioner were ineligible for MA during the entire overpayment period because petitioner obtained as of March 1, 2008 private health insurance in which the employer paid 80% of the premium. The MA overpayment for those four children included both the total amounts paid by Medicaid for each child, and the net capitation rate paid for each child during the entire July, 2008 through July, 2011. See detailed Medical Assistance Overpayment Summary.
  - 18) The county agency sent an October 13, 2011 Medicaid Overpayment Notice to the petitioner for the entire period of July 1, 2008 through July 31, 2011 in the total amount of \$60,403.99, due to petitioner's failure to timely report that Rolanda [REDACTED] was residing in her household, his earned income, and that he began employer health insurance as of March 1, 2008 resulting in MA overpayment for the household of seven as set forth in Finding of Fact #16 and #17 above).
4. In the above entitled case, the ALJ affirmed the Department determination of the Medical Assistance overpayment and dismissed Ms. [REDACTED]'s appeal.
  5. On October 22, 2012, the Department issued a Notice of MA Overpayment in the amount of \$56,871.10 for the period from 7/1/08 to 7/31/11.
  6. Petitioner filed a timely appeal.

### DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP 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. ...

*(Emphasis added)*

Wis. Stat. §49.497(1). BCP 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.

*(Emphasis added).*

### **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.

*BCPEH*, §28.1

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.

This case is one controlled by issue preclusion. The question of whether an overissuance occurred has already been actually litigated is the appeal of Ms. [REDACTED]. Issue preclusion does not require “identity of parties.” Notably though, Mr. [REDACTED]’s testimony was made part of the record in that matter. The ALJ’s findings of fact and affirmance of the overissuance are made part of this record and I make findings consistent with those. The only question then is whether petitioner is liable for the overissuance in addition to Ms. [REDACTED].

Under the Administrative Code, the parent of a minor recipient is liable for overpayments as well:

*If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability.*

Wis. Admin Code § DHS 49.497(1m)(a). Mr. [REDACTED] is the father of four of the children who were recipients of the MA, and the resultant overpayment. The record indicates that the amount sought against petitioner is the reduced amount of the MA payments that pertain only to his children.

I also note that the evidence presented by the Department was persuasive and outweighed the testimony of the petitioner who presented no corroborating evidence to support his story. If not for the doctrine of issue preclusion, I would still have affirmed this action based on the weight of the evidence presented at hearing.

### **CONCLUSIONS OF LAW**

The Department did not err in finding an overpayment of MA in the amount of 56,871.10.

**THEREFORE, it is** **ORDERED**

That this 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 10th day of May, 2013

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\sJohn P. Tedesco  
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 May 10, 2013.

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