



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MOP/145953

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 13, 2012, under Wis. Stat., §49.45(5), to review a decision by the Wood County Human Services to recover Medical Assistance (MA), a hearing was held on January 8, 2013, by telephone.

The issue for determination is whether petitioner failed to report income.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Beulah Garcia  
Wood County Human Services  
P.O. Box 8095  
Wisconsin Rapids, WI 54495-8095

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. From 2010 into 2012 petitioner received BadgerCare Plus (BC+) for a household of four. In late 2009 petitioner began to receive \$2,800 monthly from an injury settlement involving her husband. Petitioner did not report receipt of the income because she was told that it was not taxable.

3. The agency discovered the income in 2012. By a notice dated December 4, 2012, the agency informed petitioner that she was overpaid \$4,728 in BC+ from January, 2010 through October, 2012, claim nos. [REDACTED] [REDACTED] and [REDACTED]
4. Petitioner's husband, for whom the income was paid, began to receive Supplemental Security Income (SSI) in July, 2011. He thus would not have been part of the BC+ household during that time, and his income would not be counted. As a result, the agency on its own volition reduced the BC+ overpayment to \$1,454 for the period January, 2010 through June, 2011.

### DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(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.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Under BC+ rules, all income is counted in determining eligibility unless it is exempt. Wis. Admin. Code, §DHS 103.04. Uncounted income is listed in the Handbook, App. 16.2. The income paid to petitioner for her husband's injury settlement is not listed. That the income is meant to be used by the household in its discretion makes it the type of income that is counted. I note that the income of an SSI recipient is not counted, which is why the overpayment was reduced with the start of SSI eligibility. Handbook, App. 2.6.

It is unfortunate that petitioner was given the wrong impression concerning the payments by the attorney, but had she mentioned the payments to her economic support worker the overpayment would not have been as large as it is. Because the law requires the agency to recover overpayments caused by failure to report income, I must conclude that the claim was imposed correctly.

Petitioner wrote that she cannot afford to repay the claim. However, at this point the only issue before the Division of Hearings and Appeals is whether the claim was correct. Payment issues must be handled through the Department's collection unit.

**CONCLUSIONS OF LAW**

Petitioner was overpaid \$1,454 in BC+ from January, 2010 through June, 2011 because she failed to report \$2,800 per month income from an injury settlement.

**THEREFORE, it is ORDERED**

That the petition for review herein be and the same is hereby 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 14th day of January, 2013

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\sBrian C. Schneider  
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 14, 2013.

Wood County Human Services - WI Rapids  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability