



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/146801

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the PACU - 5173 in regard to Medical Assistance, a hearing was held on March 07, 2013, via phone. The Petitioner requested that the record be held open to allow her to submit additional evidence. The record was held open until March 14, 2013. On March 12, 2013, the Petitioner submitted additional information. The information was provided to the agency by DHA on March 13, 2013. The agency requested additional time to review and respond to the Petitioner's evidence. The record was held open for the agency's review and response. The record closed on March 29, 2013.

The issue for determination is whether the agency properly seeks to recover an overpayment of \$993.55 of Medical Assistance benefits from the Petitioner for the period of August 1, 2011 – May 31, 2012.

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 Johnson
PACU - 5173

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. CF was a minor child who resided with the Petitioner beginning in January, 2010.
3. On November 18, 2010, the agency issued a Notice of Decision to the Petitioner informing her that CF was enrolled on her case for BC+ benefits.
4. CF was enrolled at Custer High School in Milwaukee from January 13, 2010 – February 8, 2011. CF was enrolled in school in Little Rock, Arkansas from August 15, 2011 – April 25, 2012. She resided on the campus of the school.
5. On March 21, 2011, the agency issued a Notice of Decision to the Petitioner informing her that CF would continue to receive BC+ benefits as part of Petitioner’s household.
6. On September 12, 2011, the agency issued a Notice of Decision to the Petitioner informing her that CF would continue to receive BC+ benefits as part of Petitioner’s household.
7. On September 18, 2011, the agency issued a Notice of Decision to the Petitioner informing her that CF would continue to receive BC+ benefits as part of Petitioner’s household.
8. On March 6, 2012, the agency processed a Six Month Report Form (SMRF) from the Petitioner. The Petitioner reported CF as part of her household.
9. In May, 2012, CF turned 19 years of age and was terminated from BadgerCare benefits per agency policy.
10. On June 19, 2012, the Petitioner filed a change report with the agency reporting a change in address and shelter expense.
11. On August 2, 2012, the agency received an interstate match that CF moved to Arkansas in or about June, 2011 and has received public assistance benefits in the State of Arkansas since August 16, 2011.
12. On September 6, 2012, Petitioner reported CF had moved out of her household.
13. On January 14, 2013, the agency issued a Medicaid/Badgercare Overpayment Notice and worksheets to the Petitioner informing her that the agency seeks to recover an overissuance of MA/BadgerCare benefits in the amount of \$993.55 for the period of August 1, 2011 – May 31, 2012.
14. The agency determined the overpayment based on the net capitation rate paid for CF during the overpayment period. There were no claims paid on behalf of CF.
15. On January 22, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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 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.

...

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.

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.

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 – 28.2.

The BCP statute requires the recipient to report changes that might affect eligibility:

(6) MISCELLANEOUS ELIGIBILITY AND BENEFIT PROVISIONS. ...

(h) Within 10 days after the change occurs, a recipient shall report to the department any change that might affect his or her eligibility or any change that might require premium payment by a recipient who was not required to pay premiums before the change.

Wis. Stats. §49.471(6)(h). See in accord, BCPEH, §27.2.

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 agency has the burden of proof to establish that the action taken by the agency was proper given the facts of the case. The Petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

In this case, the agency presented convincing evidence that CF has not resided in Wisconsin with the Petitioner since June, 2011 and has received public assistance benefits from the state of Arkansas since August 16, 2011. School attendance records provide evidence that CF was enrolled in school in Milwaukee from January, 2010 – February, 2011 and in Arkansas from August, 2011 – April, 2012. The agency had contact with CF on September 5, 2012. At that time, CF reported she had not been in the Petitioner’s household or residing in Wisconsin for two years. Per regulations, the Petitioner was required to report that CF was no longer in the household within 10 days with the change to become

effective the following month. The agency started the overpayment period on August 1, 2011 based on the information it had regarding her move and the receipt of benefits in Arkansas.

At the hearing, the Petitioner testified that she took CF in to her household when CF had nowhere else to go. Her mother was incarcerated in Arkansas and her father would not care for her. The Petitioner testified that CF was in her home until sometime in 2011 when she left to go to Arkansas. She testified that CF returned for a period of time and then went back to Arkansas when CF's mother was released from jail. The Petitioner testified that neither CF nor CF's mother informed her that CF would not be returning. They did not inform the Petitioner that CF had opened her own benefit case in Arkansas. The Petitioner believed that CF would be returning but did not know when. In August, 2012, CF's mother contacted the Petitioner to ask her to remove CF from her benefit case.

The Petitioner provided no evidence at the time of the hearing to verify the dates that CF lived in her home. She requested additional time post-hearing to provide school attendance records. The Petitioner did fax information to indicate that CF was enrolled at Custer High School in Milwaukee but the information did not provide enrollment dates. The information was provided to the agency representative who requested time to verify CF's school attendance dates. The agency worker was able to get information from Custer that CF attended school there from January, 2010 – February, 2011. The agency was also able to gather information from Arkansas indicating that CF was enrolled in college in Arkansas from August 16, 2011 – April 25, 2012 and she resided on campus during that time.

The overpayment period ended when the agency terminated benefits for CF in May, 2012 when she turned 19 years of age.

Based on the evidence presented, the agency has provided sufficient information to demonstrate that CF was not residing with the Petitioner during the period of August 1, 2011 – May 31, 2012.

The agency has presented a copy of the MA/BadgerCare overpayment notice and worksheets demonstrating the computation of the overpayment at issue here. I reviewed the worksheets and additional information including the amount of the net capitation rate paid by the agency on behalf of CF. The calculations of the agency are accurate based on the evidence presented.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner was overissued MA benefits in the amount of \$993.55 for CF for the period of August 1, 2011 – May 31, 2012 based on the Petitioner's failure to report that CF was no longer a member of the household during that time.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 30th day of April, 2013

\sDebra Bursinger
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 April 30, 2013.

PACU - 5173
Public Assistance Collection Unit
Division of Health Care Access and Accountability