



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/147430

PRELIMINARY RECITALS

Pursuant to a petition filed February 16, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on March 20, 2013, at New Richmond, Wisconsin.

The issue for determination is whether the petitioner received and must repay an overpayment of medical assistance.

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: Cheryl Odle

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The county agency seeks to recover \$1,107.06 in medical assistance provided to the petitioner from March through June 2012.

3. The petitioner works five hours a day, five days a week, nine months a year as a long-term substitute school teacher. She does not work in the summer. Her income is predictable and has not changed recently.

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 income that affects their benefits to the agency by the 10th day of the month following the change. *BadgerCare Plus Eligibility Handbook*, § 27.3.

For several years, the petitioner has worked five hours a day, five days a week during the nine months of the regular school year as a long-term substitute teacher. When determining her medical assistance benefits, the agency had averaged the income she received during the nine months of the school year over 12 months. In the last year, the school district apparently stopped offering 12-month contracts to its workers. The agency contends that because of this, it can no longer average her pay over 12 months, which has the effect of increasing her monthly pay by 33%. Rather than applying this rule prospectively, it seeks to recover \$1,107.06 in medical assistance benefits provided to her family from March through June 2012 because she did not report the change in school policy to the agency.

The agency’s action is incorrect. First, the petitioner was never told that if she no longer had a 12-month contract that she would have to report a change, and reporting this certainly is not something that anyone, including those familiar with medical assistance policy, would find obvious. Her financial circumstances have not changed: she has exactly the same amount to live on as in the past. The statute covering overpayments indicates that the Department “may” recover overpayments under the circumstances listed there, which means it has discretion on whether to do so. Under the circumstances found here, even if it had some technical basis for recovering the benefits, it should have used its discretion and not done so.

More importantly, its determination that agencies cannot average the incomes of workers without a contract is incorrect. *Medicaid Eligibility Handbook*, § 16.4.1., does require that the income of contractual workers be divided over the length of the contract, this policy does not state or imply that the income of those without a contract cannot also be averaged. Several other sections of the *Handbook* make it clear that such income should be averaged as long as it is predictable. Thus, *Medicaid Eligibility Handbook*, § 16.6, which pertains to fluctuating income states:

If the amount or frequency of regularly received income is known, average the income over the period between payments. If neither the amount nor the frequency is predictable, do not average; count income only for the month in which it is received.

The *Medicaid Eligibility Handbook*, § 16.7, spells out how to prorate income that is received less than once a year:

Income received on a yearly basis or less often than monthly, that is predictable in both amount and frequency, must be converted to a monthly amount or prorated.

Prorate means "to distribute proportionately."

Finally, *Medicaid Eligibility Handbook*, § 16.8, which pertains to migrant workers, states:

Use annualized earned income for migrant worker's income. "Annualized earned income" is a prospective monthly estimate of earned income based on the estimated total gross annual earnings divided by 12. Annualized income can be based on the past 12 months of the migrant family's income if it is anticipated that last year's income is the best estimate of the current year's prospective income.

Taken together, these sections demonstrate that averaging predictable income is the rule rather than exception. Viewed in this context, the requirement in § 16.4.1. that contractual workers must have their income averaged indicates only that there is no exception to this rule that would allow these workers to receive benefits based on their actual, possibly lower, income for a particular month; it does not imply that workers without a contract cannot have their income averaged. Based upon this, I find that the petitioner was not overpaid medical assistance.

CONCLUSIONS OF LAW

The petitioner was not overpaid medical assistance because she did not have to notify the agency that her income was no longer covered by a 12-month contract.

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 remove the finding that the petitioner received \$1,107.06 more in medical assistance than she was entitled to from March through June 2012 and stop all attempts to recover this amount.

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 11th day of April, 2013

\sMichael D. O'Brien
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 11, 2013.

St. Croix County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability