



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/147527

PRELIMINARY RECITALS

Pursuant to a petition filed February 19, 2013, under Wis. Stat., §49.45(5), to review a decision by the Manitowoc County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on April 24, 2013, by telephone. A hearing set for April 4, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner was overpaid BadgerCare Plus (BC+) MA.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Michelle Koepfel
Manitowoc County Dept. of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. In late 2012 petitioner was receiving BC+ for a five-person household, with one of the children excluded from BC+ coverage by choice. The income counted was petitioner's unemployment compensation (UC) and petitioner's wife's earned income.
3. In December the county worker noted that petitioner's UC had ended. She discovered that petitioner began to work in October, 2012. He worked briefly for Pioneer, but then began working for [REDACTED]. His [REDACTED] income is \$5,616 per month. Had petitioner reported the

- job the income would have been budgeted beginning December 1, 2012. By the time the agency compiled the income information January and February, 2013 BC+ had been issued.
4. Petitioner's wife earned \$957 per month.
 5. By a notice dated January 26, 2013, the agency informed petitioner that he was overpaid a total of \$835 in MA from December 1, 2012 through February 28, 2013, claim nos. 1900371561 and 2900371562. The amount was for all MA payments received in those three months.
 6. Petitioner did not have access to employer-sponsored insurance until February 1, 2013.

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:...

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....

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.

To be eligible for BC+, a person must be under age 19, a custodial parent living with a child, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. Under BC+ rules the income limit for caretaker parents is 200% of the poverty level. BC+ Handbook, Appendix 16.1. That amount for a five-person household is \$4,595. Handbook, App. 50.1. Thus any BC+ paid for petitioner and his wife was an overpayment beginning December 1, 2012 because household income of approximately \$6,500 was above the 200% limit.

For the children the result is the same but with a different process than originally done by the agency. The agency thought that the children had access to insurance in December and January, but they did not. A child without access to insurance is eligible for BC+ regardless of income, but with a premium. Based upon household income the children's premium would have been \$97 per month. See BC+ Handbook, App. 48.1.1. Because petitioner did not pay premiums for the children at the time, the overpayment would be the missed premiums, which would amount to almost \$291. However, the overpayment calculated by the agency for the children was the \$234 paid by the program for capitation fees (with the parents' share of the overpayment being \$601). The children's share of the calculated overpayment was less than the premiums that would have been owed, and the overpaid portion is the lesser of the MA actually paid or the premiums. Thus the children's portion of the overpayment was correct even though the process for getting there was different because of the access-to-insurance issue.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid \$835 in MA between December, 2012 and February, 2013.

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 30th day of April, 2013

\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 April 30, 2013.

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