



FH



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

In the Matter of



DECISION

MOP/147569

PRELIMINARY RECITALS

Pursuant to a petition filed February 21, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on March 14, 2013, at Fond Du Lac, Wisconsin. At the request of the parties, the record was held open for the county's initial submission, the petitioner's responsive submission, and the county's reply statement to be submitted to DHA and the other party. Both parties timely submitted both of their statements to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly determined petitioner was overpaid \$1,179.00 in BadgerCare (BC) benefits during the period of December, 2011 to March, 2012, and then July, 2012 through October, 2012, due to petitioner's failure to timely report accurate household composition and her boyfriend's earned income which resulted in petitioner owing a total of \$1,179 in BadgerCare premiums for that period for petitioner and her children.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Gena Miller, ESS

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:



Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County who resides with her four children.
2. The petitioner has four children in common with her boyfriend, [REDACTED].
3. The petitioner received BadgerCare (BC) benefits for a household of six (including Mr. [REDACTED]) during most of 2011, but those BC and FS cases closed as of November 2011 due to lack of review.
4. The petitioner applied for FoodShare and Medical Assistance as a single parent with her four children during January, 2012 stating that [REDACTED] was no longer residing in her household, and thus a BC group of five.
5. The petitioner received BadgerCare (BC) benefits for the period of December, 2011 to March, 2012, and then July, 2012 through October, 2012.
6. During her January 10, 2012 initial application interview process, her six month review form (SMRF) on June 4, 2012 and during her annual review on December 17, 2012 petitioner maintained both orally and in writing that she lived alone with her four minor children. Petitioner claimed that their father, [REDACTED], resided with her sister in a rental property owned by petitioner's parents.
7. During the hearing, neither petitioner nor [REDACTED] were able to provide any evidence that during the overpayment period [REDACTED] paid any monthly rent to his parent or had a lease or any other contract with his parents as a rental agreement.
8. Neither petitioner nor Mr. [REDACTED] were able to provide any receipt of any kind to establish that he paid any rent or utility bills during the period he was allegedly living with petitioner's sister at his parent's rental property.
9. Petitioner stipulated that [REDACTED] "returned" to reside with her in her home as of January 1, 2013.
10. Due to a "tip" on December 27, 2012 that [REDACTED] did reside in petitioner's household, the county agency began investigating whether the father of petitioner's four children ([REDACTED]) had been residing with petitioner at least as of January, 2012, and that his income had not been timely reported to the county agency. The case was referred to O'Brien and Associates to conduct an investigation.
11. Petitioner's brother, [REDACTED], clearly confirmed that [REDACTED] resided with the petitioner during the BC overpayment period of December, 2011 to March, 2012, and then July, 2012 through October, 2012. See January 13, 2013 O'Brien Investigative Report.
12. The petitioner works about 40 hours per week at the [REDACTED] and earns \$7.25 per hour.
13. The amount of the petitioner's earned income is not disputed in this overpayment appeal.
14. [REDACTED] has been employed by [REDACTED] since August 23, 2010. He has worked about 40 hours per week (sometimes with additional overtime), and his current pay rate is about \$1,327 every two weeks.
15. [REDACTED] receives private employer health insurance through Anthem Blue Cross/Blue Shield from Saint Louis, Missouri.
16. [REDACTED]'s earned income was not included in determining petitioner's BC eligibility and benefits for the BC overpayment period of December, 2011 to March, 2012, and then July, 2012 through October, 2012 creating petitioner's BC overpayment.

17. Petitioner's boyfriend's earned income (as stated in Finding of Fact #14 above) was not included in determining petitioner's BC eligibility and premiums due for the entire BC overpayment period of December, 2011 to March, 2012, and then July, 2012 through October, 2012 creating petitioner's BC overpayment.
18. The petitioner's household's total income was over 150% of Federal Poverty Limit (FPL) during the BC overpayment period (over 133% as of July, 2012), and petitioner was therefore required to report by December, 2011, her total household income regarding her BC premiums and continued BadgerCare Plus eligibility.
19. On January 17, 2013, the Fond du Lac county agency sent a Notice of BadgerCare Overpayment to petitioner informing that she was overissued \$1,179.00 in BC benefits from December, 2011 to March, 2012, and then July, 2012 through October, 2012, due to failure to report to the county agency accurate household members (her boyfriend in the home) and his earned income and thus unpaid BC premiums. The overpayment worksheet explained in detail how the \$1,179 overpayment had been calculated based upon those unpaid BadgerCare premiums for petitioner and her four children during the overpayment period of December, 2011 to March, 2012, and then July, 2012 through October, 2012. The overpayment did not include any capitation or medical fees in that \$1,179 overpayment amount. The total unpaid BC premium for petitioner was \$907, and the premium for her children was \$207 (premium for children owed when household income above 200% FPL) for a total overpayment of \$1,179.00

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.

2. ... Fraud. ...

BCPEH, §28.1 – 28.2.

The overpayment must be caused by the client’s error. Overpayments caused by agency error are not recoverable.

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.

In this case, the county agency proved by the preponderance of the evidence that the basis for the overpayment was client error. The county agency correctly determined that [REDACTED] [REDACTED] was part of the petitioner’s BC household, and that his income had not been used to determine her BC eligibility and benefits which, in turn, gave rise to the BC overpayments during the period of December, 2011 to March, 2012, and then July, 2012 through October, 2012.

During the March 14, 2013 hearing, the petitioner and [REDACTED] [REDACTED] testified with many explanations and excuses for why Mr. [REDACTED] allegedly did not live with her during the overpayment periods in question. Their testimony was not credible. The petitioner was unable to provide any reliable evidence to refute

the county's case. During the testimony of petitioner, she alleged that [REDACTED] was residing with her sister in a rental property owned and managed by petitioner's parents. Petitioner admitted she was unable to provide any evidence of any lease or contract of any kind for [REDACTED] [REDACTED] during the overpayment period. Furthermore, the testimony of petitioner and Mr. [REDACTED] appeared entirely unconvincing as both admitted they had no receipts or documents whatsoever to confirm any rental payment by [REDACTED] to her parents.

Overall, the petitioner presented a weak case and failed to undermine the county's MA and FS overpayment cases. During the March 14, 2013 hearing, petitioner was unable to present any reliable evidence to refute or undermine the county's testimony or evidence that [REDACTED] [REDACTED] resided with the petitioner and their children during the entire FS overpayment period. Therefore, Mr. [REDACTED]'s earned income must be budgeted as income in determining petitioner's BC eligibility and benefits.

During the March 14, 2013 hearing, petitioner was unable to refute the county's case, or undermine any of its documentation that it was correctly seeking an MA overpayment against the petitioner during the period of December, 2011 to March, 2012, and then July, 2012 through October, 2012. While the record was held open, the petitioner failed to submit any reliable evidence to refute the county agency's MA overpayment case. Furthermore, petitioner was also unable to establish any error in the county's calculation of her BC overpayment, or that she had made any payments towards that overpayment. Accordingly, for the above reasons, I conclude that the county agency correctly determined petitioner was overpaid BadgerCare benefits \$1,179.00 in BadgerCare (BC) benefits during the period of December, 2011 to March, 2012, and then July, 2012 through October, 2012, due to petitioner's failure to timely report accurate household composition and her boyfriend's earned income which resulted in petitioner owing a total of \$1,179.00 in BadgerCare premiums for that period for herself and her children.

CONCLUSIONS OF LAW

The county agency correctly determined petitioner was overpaid BadgerCare benefits \$1,179.00 in BadgerCare (BC) benefits during the period of December, 2011 to March, 2012, and then July, 2012 through October, 2012, due to petitioner's failure to timely report accurate household composition and her boyfriend's earned income which resulted in petitioner owing a total of \$1,179.00 in BadgerCare premiums for that period for herself and her children.

THEREFORE, it is

ORDERED

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 7th day of June, 2013

\sGary [REDACTED]
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 7, 2013.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability