



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/148015

PRELIMINARY RECITALS

Pursuant to a petition filed March 13, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Clark County Department of Social Services in regard to Medical Assistance, a telephone hearing was held on April 16, 2013.

The issue for determination is whether the petitioner was overpaid BadgerCare Plus (BCP) benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tom Miller

Clark County Department of Social Services
Courthouse
517 Court Street, Rm. 502
Neillsville, WI 54456-0190

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Clark County.
2. BCP is a variant of Medical Assistance in Wisconsin for families with children. Effective August 1, 2011, the petitioner was approved for BCP as a pregnant woman.

3. On November 27, 2011, the respondent issued written notice to the petitioner advising her, in part, of her reporting requirements. The notice advised:

Based on the benefits you are getting, you must tell your local agency within 10 days if someone: ... becomes pregnant or has a pregnancy end. ... If you don't report a change listed above, and you get benefits or coverage that you aren't eligible for, you may have to pay us back.
4. The petitioner's baby was due in March, 2012, but unfortunately the petitioner delivered her child stillborn, via C-section in December, 2011.
5. The petitioner was not eligible for BCP from the expiration of the reporting period for the end of pregnancy through May of 2012. On March 4, 2013, the respondent issued a *Medicaid Overpayment Notice* to the petitioner, stating that she had been overpaid \$1,179.03 for the March 1, 2012 through May 31, 2012, period.

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 eligibility 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/>.

Department policy then instructs the agency, in a "no eligibility" case, to base the overpayment determination on the actual MA/BCP charges paid:

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.

In this case, the agency asserts that the petitioner failed to report the change in her status as a pregnant woman for the overpayment months. When she was not pregnant, she was not eligible for benefits. Wis. Stat. §49.471(4)(a). Based on her undisputed lack of pregnancy, the agency came up with the \$1,179.03 overpayment amount. The petitioner does not challenge the agency's arithmetic, but does assert that the overpayment was not her fault. Specifically, she stated that she did, in fact, report the change in her pregnancy status.

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. Thus, the existence of the timely reporting requirement is clear. The only issue is whether the petitioner should be excused from the reporting requirement because of notice provided to ForwardHealth, as opposed to her local agency.

The November 27, 2011, notice could have been clearer with the respect to *how* to report the end of a pregnancy. The petitioner testified, credibly, that she was hospitalized on December 6, 2011, underwent the C-section procedure, remained hospitalized until December 10, 2011, and contacted what she believes was ForwardHealth on December 15, 2011. The petitioner stated that she was informed at that time that her benefits would continue through May of 2012. The respondent reviewed its records and could find no evidence of a phone call from the petitioner on that date reporting the end of her pregnancy. The respondent cannot confirm or dispute petitioner's contention that she called ForwardHealth, but noted that, if she did call ForwardHealth, she should have been notified to contact her local agency. Respondent's representative noted that ForwardHealth would not have notified respondent on any reported changes.

The respondent relies upon its September 27, 2011 notice in support of its claim that the petitioner was notified of her reporting requirements. Notably, nowhere in the page 5 "Your Reporting Rules" section does it specify exactly to whom the report must be made. The "Key Contacts" section located right after the Reporting Rules section identifies, among other things, a website address for ACCESS to "report changes," and also lists a 1-800 number for general questions about healthcare benefits. On the first page, a worker is identified, and a phone number is listed. There is no mention under "Your Reporting Rules" that the petitioner must call the worker listed on page one, as opposed to calling the 1-800 number listed on page 5. Petitioner believes that she called the number on her ForwardHealth card. I do not find this unreasonable, either.

Based on the totality of the evidence presented, I find that petitioner did, in fact, timely report the end of her pregnancy. While she apparently contacted ForwardHealth, the worker with whom she spoke failed to advise her to also contact her agency worker (presumably the worker identified at page one of the

November 27, 2011 notice). It appears that the ForwardHealth worker also provided her with incorrect information regarding the BCP benefits extending through May of 2011.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable. See, Wis. Stat., §49.497(1). I conclude that the petitioner reported the end of her pregnancy in accordance with the notice that was provided to her. As such, while an overpayment did indeed occur, it was not the fault of the petitioner. Agency error caused this overpayment.

CONCLUSIONS OF LAW

1. The petitioner received an overpayment of BCP benefits between March 1, 2012 and May 31, 2012, because her pregnancy had ended in December of 2011.
2. The overpayment of BCP benefits between March 1, 2012 and May 31, 2012, was the result of agency error, and therefore is not recoverable by the respondent.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent with instructions that within 10 days of the date of this decision it delete the BCP overpayment in accordance with the Conclusions of Law, above, and thereby end its attempts to recover BCP benefits provided to the petitioner between March 1, 2012 and May 31, 2012.

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 May, 2013

\sPeter McCombs
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 May 30, 2013.

Clark County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability