



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/148161

PRELIMINARY RECITALS

Pursuant to a petition filed March 20, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a hearing was held on April 22, 2013, at Janesville, Wisconsin.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid BadgerCare Plus (BCP) and Medicaid Purchase Plan (MAPP) benefits of \$4,317.00 for the June through December, 2012, period.

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: Mary Donahue

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner's BCP/MAPP household was certified from at least June, 2012 through December, 2012. The household's eligibility was calculated on the basis of the following reported gross monthly household income: \$1,365 in monthly Social Security (petitioner), \$732 in monthly Social Security (petitioner's son), and \$200 every other week in earnings from Drs. Elliott and Webb. See, Notice dated February 1, 2012.
3. From June through December 16, 2012, the petitioner did not report an increase in her earnings.
4. On December 16, 2012, petitioner reported during a telephone conference with respondent that she had been working at Alcocare, Inc. for at least the past month.
5. Respondent subsequently determined that the petitioner's household monthly earned and unearned income exceeded the BCP/MAPP premium income limits for the entire June, 2012 to December, 2012, overpayment period. The household's June, 2012 income put it at 227% of FPL,¹ which meant that the household remained eligible, although with a premium.
6. When the Department recalculated BCP/MAPP eligibility for June through December, 2012, it determined that the household had been overpaid \$4,317.00 for the period. A *Medicaid/BadgerCare Overpayment Notice* and worksheets were issued to the petitioner on March 12, 2013. The *Notice* advises that the petitioner was overpaid \$4,317 for the June through December, 2012 period (claims # [REDACTED] for the adult of \$4100, and # [REDACTED] for the child of \$217), due to the recipient's reporting errors.
7. Petitioner timely appealed the overpayment determination on March 20, 2013.

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)

¹ Household income for July, 2012 through December, 2012, varied from 237% to 276% FPL.

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.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a “no eligibility” case, to base the overpayment determination on the actual MA/BCP charges paid (see 2nd paragraph below):

28.4.2 Overpayment Amount

Use the actual income that was reported or required to be reported in determining if an overpayment has occurred.

If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount.

If the case is still eligible for BC+ for the timeframe in question, but there was an increase in the premium, recover the difference between the premiums paid and the amount owed for each month in question. To determine the difference, determine the premium amount owed and view the premium amount paid on CARES screen AGPT.

BCPEH, § 28.4.2.

The petitioner did not deny the wages attributed to her by the agency at hearing, nor the delay in reporting her increased income. She testified that the error was a simple misunderstanding, and not committed with any intent. I did not find any intentional effort to mislead the respondent, nor did the respondent allege any such intentional effort. The petitioner did not question the respondent’s calculations; I have reviewed the calculations and did not note any errors. I conclude that the respondent has established by a preponderance of the evidence that petitioner’s household received an overpayment of BCP/MAPP benefits due to the fact that petitioner’s untimely reported household income would have imposed a premium requirement on petitioner and petitioner’s minor child from June through December, 2012.

CONCLUSIONS OF LAW

The Department correctly determined that the petitioner’s household was overpaid BCP/MAPP benefits of \$4,317.00 from June through December, 2012.

THEREFORE, it is

ORDERED

That the petition 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 Madison,
Wisconsin, this 4th day of June, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
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 4, 2013.

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