



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/148641

PRELIMINARY RECITALS

Pursuant to a petition filed April 08, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Calumet County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on May 13, 2013, at Oshkosh, Wisconsin.

The issue for determination is whether respondent correctly found that petitioner was overpaid MA (BadgerCare Plus) benefits during the period of October, 2011 through June, 2012.

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: Lynn Brenner

Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County who resides with her boyfriend and her three children. Petitioner's boyfriend is the father of the petitioner's youngest child.

2. The county agency discovered that petitioner's boyfriend has resided in the petitioner's home since May of 2011, and that his income had not been timely reported to the county agency.
3. The petitioner and her three children received BadgerCare (BCP) benefits during the period of October, 2011 through June, 2012.
4. The petitioner failed to timely report to the county agency that her boyfriend resided in her household during the overpayment period and his earned income.
5. Petitioner's boyfriend's earned income was not included in determining petitioner's BCP eligibility for the entire BCP overpayment period of October, 2011 through June, 2012, creating petitioner's BCP overpayment.
6. On March 19, 2013, the respondent sent a Notification of BadgerCare Overpayment to petitioner informing that she was overissued \$5,216.30 in BCP benefits from July, 2010 through September, 2011, due to failure to report to the county agency accurate household members (her boyfriend in the home) and his earned income. The overpayment worksheet explained in detail how the \$5,216.30 overpayment had been calculated based upon BadgerCare benefits provided to petitioner and her three children during the overpayment period of October, 2011 through June, 2012.

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.

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.

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 presented a well-organized and documented case to establish that it was correctly pursuing an MA overpayment against the petitioner. The county agency discovered that petitioner had failed to report accurate household composition and her boyfriend’s earned income. As a result, the county agency correctly determined that the petitioner was overpaid \$5,216.30 for her failure to report correct household composition and income as required, resulting in her receipt of incorrect BCP benefits during the overpayment period in question.

During the May 13, 2013 hearing, petitioner was unable to refute the county’s case, or undermine any of its documentation that it had correctly established an MA overpayment against the petitioner during the period of October, 2011 through June, 2012. Furthermore, petitioner did not establish any error in the county’s calculation of her BCP overpayment, or that she had made any payments towards that overpayment. I note that petitioner’s ACCESS application form date January 25, 2010 included petitioner’s boyfriends name under the “Absent Parent Information” heading. Again, in her May 25, 2011 renewal form, petitioner added her boyfriend’s name in a hand-written change under the heading “Absent Parent Information.” Petitioner then testified at hearing that she started living with her boyfriend in May of 2011. Petitioner claims that she called the respondent to report that he was living with her, but Case

Comments do not verify this. Petitioner provided nothing to corroborate her notification claim implying that the respondent was at fault. Accordingly, for the above reasons, I conclude that the respondent has demonstrated by a preponderance of the evidence that petitioner was overpaid BadgerCare benefits of \$5,216.30 during the period of October, 2011 through June, 2012, due to petitioner's failure to timely report accurate household composition and her boyfriend's earned income.

CONCLUSIONS OF LAW

The respondent correctly determined petitioner was overpaid \$5,216.30 in BadgerCare benefits during the period of October, 2011 through June, 2012, due to petitioner's failure to timely report accurate household composition and her boyfriend's earned income.

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 1st day of July, 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 July 1, 2013.

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