



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/148827

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 18, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on May 28, 2013, at Madison, Wisconsin.

The issue for determination is whether the petitioner was overpaid BCP for June 2012 in the amount of \$367.

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: Luisa McKy, ES Spec.  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The petitioner received BCP for herself and her two children from at least February through June, 2012. The income received by the petitioner in April 2012 was \$3,371, which exceeds 200% of

the federal poverty level (FPL) for a household of three persons (\$3,181). Her income received in May 2012 was \$1,707.68, which exceeded 100% FPL for three persons (\$1,590.33). Her income received in June 2012 was \$5,436.87. The petitioner received two paychecks in June, rather than the customary single check. The higher income received in April 2012 triggered a 10-day income reporting responsibility for the petitioner.

3. The petitioner did not report her increased income during April, May or June 2012.
4. On March 20, 2013, the county agency issued a *Medicaid/BadgerCare Overpayment Notice* to the petitioner. The *Notice* advised that the petitioner had been overpaid BCP benefits totaling \$367.00 for June 2012 (claims # [REDACTED], # [REDACTED]). The basis for the overpayment was the petitioner's failure to timely (by May 10, 2012) report that her income had increased to a level that changed her eligibility or premium liability. Further, her actual income for June 2012 made her ineligible for adult BCP, and added a premium liability for her children.
5. In determining the amount of the June 2012 overpayment, the agency used the premium amount that would have been due for the petitioner's two children -- \$195. The petitioner paid no premium for them for June 2012. The agency also used the HMO capitation fee paid for the petitioner -- \$199, and then subtracted the adult premium amount that she actually paid -- \$27, leaving a difference of \$172 to be added to the children's overpayment. The capitation fee was the starting point in the calculation because the petitioner was not eligible for any adult BCP for June 2012, based on her income.

### 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.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:

### **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.

*BCPEH*, §28.1.

In this case, the agency asserts that the petitioner failed to report the increase in her income in April 2012 to above the 200% of the federal poverty level (FPL). 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. When this reporting responsibility was triggered, she had until May 10, 2012, to report the higher income. April and May 2012 are not considered part of the overpayment, because the petitioner was not obligated to report until May, and the agency could not have acted on such a report until June 1, 2012.

When a recipient’s income exceeds 200% FPL, she is no longer financially eligible for BCP. Looking at June 2012, because the petitioner’s income exceeded 200% FPL, she was not eligible for benefits. Wis. Stat. §49.471(4)(a). Based on her excess income, the agency came up with the overpayment amount.

The petitioner does not deny that she received paychecks for the amounts identified in Finding of Fact # 2. She testified that these checks, especially the two checks received in June 2012, were higher than what she received during the period in which she worked as a non-contractual substitute teacher. That period was October 2011 through June 2012. The petitioner also received earnings of \$729 in July 2012 for teaching summer school, and had income of \$1,425 for August 2012. In September 2012, she became a contractual teacher, and went off of assistance.

In calculating income for this overpayment determination, the agency worker used the standard practice of counting all income actually received in the month in question, June 2012. There is a BCP policy that directs a different treatment of income for a school employee under contract: the income for the entire year is divided by twelve, regardless of when the school district actually issues the paychecks. See,

*BCPEH*, § 16.4.1. The petitioner was not a contractual employee in June 2012, so the county worker was correct not to apply § 16.4.1 to this case.

I also wondered if the double payment in June 2012 could be excused and divided in half as a “wage advance.” However, the BCP policy on wage advances is to “count advances on wages as earned income in the month received.” *Id.* This language does not help the petitioner here.

Finally, I looked at the policy direction for prorating income:

**16.7 PRORATING INCOME**

Income received on a yearly basis or less often than monthly, that is predictable in both amount and frequency, must be converted to a monthly amount or prorated.

*Id.*, § 16.7. Because the petitioner’s income was received monthly, there is no basis for creating a monthly average under this policy.

**CONCLUSIONS OF LAW**

1. The petitioner failed to timely report her increased income in April 2012, triggering a duty to report higher income in May 2012; she did not timely make such a report
2. The county agency correctly determined that the petitioner was overpaid \$367 in BCP fees during June 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 17th day of July, 2013

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\sNancy J. Gagnon  
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 17, 2013.

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