



FH
[REDACTED]

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

In the Matter of

P [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/149360

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 2013, under Wis. Stat., §49.45(5), to review a decision by Milwaukee Enrollment Services to recover Medical Assistance (MA), a hearing was held on June 12, 2013, by telephone.

The issue for determination is whether petitioner is liable for an MA overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Katherine May
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received BadgerCare Plus (BC+) MA in 2012 and 2013 for a household of seven. Petitioner began a job on April 23, 2012 that caused household income to rise above 200% of poverty. There is no record that he reported the start of the job to the economic support agency.
3. When the agency discovered the income an overpayment specialist obtained the monthly income figures and budgeted the income retrospectively. The result was that the children would have been eligible for BC+ but with sizeable premiums (between \$420 and \$743 from July, 2012

through January, 2013), and the parents would have been ineligible for BC+ entirely from July through October, 2012.

4. By notices dated April 9, 2013, the agency informed petitioner that he was overpaid \$4,051 due to missing premiums for the children, claim no. [REDACTED], and \$2,043.81 in MA payments for the parents, claim no. [REDACTED].

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(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.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Petitioner did not contest the overpayment calculations. Instead he testified that he reported the job, thus making the error an agency one. Specifically petitioner testified that he called the call center after getting the job. He told the person who answered that he had a job with no insurance coverage for a period of time. The person told him that he did not have to do anything until his next review (which would have been in early 2013).

The problem with petitioner's case is that there is no record of this call. Case notes from 2012 show no contact between February when he was completing his annual review until December. With no record I have no description of his April, 2012 phone call with the call center. The response from the call center employee would have depended entirely on what petitioner told him or her. I do not know if petitioner mentioned his name and case number or the amount he would be earning. If petitioner said only that he had a job with no insurance, but did not mention the potential income, the worker would not have reason to request details. That there is no record of the call whatsoever suggests that the call center worker took the call as a general eligibility question, not a call to report a job with substantial income. I note that a notice dated February 15, 2012 informed petitioner that he had to report within ten days if household income rose above \$5,821.

I conclude that the overpayment was calculated correctly. Petitioner's income put the family over the BC+ limits, and there is no record that he reported the job or income. The best evidence I have is that he made a call with general eligibility inquiries, not a call to report a new job.

CONCLUSIONS OF LAW

The agency correctly determined an MA overpayment based upon petitioner's failure to report a new job that changed the household eligibility status.

THEREFORE, it is ORDERED

That 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 17th day of June, 2013

\sBrian C. Schneider
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 June 17, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability