



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/149464

PRELIMINARY RECITALS

Pursuant to a petition filed May 16, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on July 29, 2013, at La Crosse, Wisconsin. At the request of petitioner a hearing set for June 24, 2013 was rescheduled. At the request of the parties, the record was held open for two weeks for the submission of closing arguments to the Division of Hearings and Appeals (DHA). Both parties timely submitted their arguments to DHA which are received into the hearing record.

The issue for determination is whether the county agency is correctly pursuing a BadgerCare (BC) Plus overpayment against the petitioner in the amount of \$2,318.31 during the period of August 1, 2012 to February 28, 2013, due to his failure to timely report employment and income from his new job resulting in BC overpayment from HMO paid capitation fees for petitioner and his wife.

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: Bob Uebele, ESS

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County who resides with his wife, [REDACTED], and their two minor children.
2. On March 5, 2012, petitioner applied for BadgerCare benefits for a household of four.
3. On May 3, 2012, the county agency approved petitioner and his family for Badger Care (BC) Plus benefits.
4. The petitioner's household of four received BC benefits during the period of August 1, 2012 through February 28, 2013.
5. The petitioner signed Notices of Responsibilities which stated that petitioner must promptly and accurately notify the county agency of his household's income and changes to his employment or income.
6. During June, 2012, the petitioner began new employment as an agent for [REDACTED] [REDACTED]. The petitioner failed to timely report to the county agency that new employment until that employment and income were discovered as part of petitioner's online February 20, 2013 BC review.
7. The petitioner was required to report that new employment and income at [REDACTED] to the county agency by July 10, 2012, but failed to do so.
8. The petitioner had the following paychecks (as wage advances from his commissions as an [REDACTED] salesman) from [REDACTED] [REDACTED] Agency: a) an average of \$2,000 per month for the months of August, 2012 through December, 2012 and \$1,323.55 for the months of January and February, 2013. See State Wage records and petitioner's 2011 tax return.
9. [REDACTED] [REDACTED] did withhold FICA taxes (Social Security taxes) from petitioner's monthly wages (paychecks) during the entire period of August, 2012 through February, 2013.
10. Cash advances on wages is counted as earned income in the month received in determining BadgerCare eligibility and benefits pursuant to the BadgerCare Plus Eligibility Handbook, § 16.4, #3, "Wage advances."
11. The petitioner's wife is attorney for her firm, [REDACTED] [REDACTED] [REDACTED]. Her 2011 tax return schedule C indicates gross income of \$94,141 and a net profit of \$58,371. Her average monthly earned income during the period of August, 2012 through February, 2013 was \$2,835.59. See petitioner's 2011 tax returns for himself and his wife.
12. The petitioner and his wife had total household income of \$4,835.59 during the period of August, 2012 through December, 2012 and \$4,159.14 during the period of January through February, 2013.
13. The petitioner's household's income was above the BadgerCare income eligibility limit (200% FPL) of \$3,842 during the period of August, 2012 through January, 2013 and the increased BC income limit of \$3,925 for February, 2013 for a household of four for a total BC overpayment of \$2,318.31. That overpayment was calculated based upon the following: a) petitioner's MA paid HMO premiums of \$1,355.27; b) petitioner's wife's MA paid HMO premiums of \$1,724.44; c) petitioner's wife's MA payment of \$85.60 minus BC premiums underpaid of \$847 by petitioner for a total overpayment of \$2,318.31 (\$3,165.31 - \$847 = \$2,318.31).
14. The county agency sent an April 4, 2013 BC Overpayment notice to the petitioner stating that he received an MA overpayment of \$2,318.31 during the overpayment period of August 1, 2012 to February 28, 2013, due to client error.

15. The basis for the overpayment was that petitioner failed to timely report by July 10, 2012 to the county agency that he started a new job and his earned income from his employment at [REDACTED] [REDACTED], and as a result petitioner's household's income (including his wife's earned income) was above the BC gross income eligibility limit of \$3,842 for the months of August, 2012 through January, 2013 and \$3,925 for the month of February, 2013 for a BC household of four.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (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.

(Emphasis added).

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.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

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 did not discover the petitioner's new employment and income at [REDACTED] (as of June, 2012) until petitioner's online February 20, 2013 BC review. Petitioner and his wife had total household income of \$4,835.59 during the period of August, 2012 through December, 2012 and \$4,159.14 during the period of January through February, 2013. The petitioner's household's income was above the BadgerCare income eligibility limit (200% FPL) during the period of August, 2012 through January, 2013 of \$3,842 and the increased BC income limit of \$3,925 for February, 2013 for a household of four. The basis for the overpayment was that petitioner failed to timely report by July 10, 2012 to the county agency that he started a new job and his earned income from his employment at [REDACTED], and as a result petitioner's household's income (including his wife's earned income) was above the BC gross income eligibility limits for the entire overpayment period for a BC household of four. The \$2,318.31 overpayment was calculated based upon petitioner's MA paid HMO premium of \$1,355.27, his wife's MA paid HMO premium of \$1,724.44; and his wife's MA payment of \$85.60 minus BC premiums underpaid of \$847 by petitioner for a total overpayment of \$2,318.31 ($\$3,165.31 - \$847 = \$2,318.31$).

During the July 29, 2013 hearing, petitioner was unable to refute the county's case, or undermine any of its substantial documentation that it was correctly seeking an MA overpayment against the petitioner during the period of August, 2012 through February, 2013. Further, the county representative explained that petitioner was notified of his responsibility to accurately and timely report all of her household's income information and any **changes** to household income (such as a new job), as he did sign "Notices of Responsibility." Moreover, petitioner was also unable to establish any error in the county's calculation of the BC overpayment. He was also unable to refute that the county agency correctly determined the MA HMO fees had been paid on behalf of petitioner and his wife during the overpayment period in addition to an MA payment for his wife.

However, during the July 29, 2013 hearing and in his written closing statement, petitioner's sole argument was that the income he received from [REDACTED] were wage "advances." He asserted that he was paid on a commission basis and that his monthly wages since June, 2012 were only advances on his future earnings for the company as a salesman. He further explained that he believed that such advances were

actually incurred debt, and therefore did not need to be reported as income to the county agency. The petitioner was unable to provide any policy or law which indicated that wage advances were not counted as income in BC determinations.

State policy clearly states that Cash advances on wages is counted as earned income in the month received in determining BadgerCare eligibility and benefits pursuant to the BadgerCare Plus Eligibility Handbook, § 16.4, #3, "Wage advances." Furthermore, even if petitioner were confused about the status of his regular monthly income he failed to contact the county agency to ask if his new employment and income should be reported in regard to determination of his BadgerCare eligibility. Such failure to timely notify the county of his new job and income were even more questionable as his wife is an attorney. Moreover, the county agency correctly responded that petitioner's employer, [REDACTED] [REDACTED] did withhold FICA taxes (Social security taxes) from petitioner's monthly wages from each of his paychecks during the entire period of August, 2012 through February, 2013. His employer was treating his twice monthly paychecks as income by taking out FICA deductions. Finally, the BadgerCare Plus Handbook provides that BC members must report their income changes when their total monthly gross income exceeds the percentages of the Federal Poverty Limit (FPL for their group size by the 10th of the month following the month in which total income exceeds the previous threshold. BadgerCare Plus Handbook, section 27.3, "Income Change Report." The petitioner failed to do so.

Based upon the answers during the hearing and in the detailed itemization of his overpayment provided by the county (including detailed payment fees and capitation fees for petitioner and his wife), the petitioner was provided a full explanation of her BadgerCare overpayment. The petitioner was unable to establish with any specificity any error on the part of the county agency in concluding that his household income was above the income limit during the entire overpayment period or that he had improperly received MA payments on behalf of his household due to his household's income ineligibility. Accordingly, for the above reasons, I conclude that the county agency correctly determined that petitioner was overpaid \$2,318.31 in BadgerCare (BC) benefits for petitioner and his wife during the period of August 1, 2012 through February, 2013, due to petitioner's failure to timely report his new employment and income as of July 10, 2012 which resulted in household income above the BadgerCare income eligibility limit during the entire overpayment period

CONCLUSIONS OF LAW

The county agency is correctly pursuing a BadgerCare (BC) Plus overpayment against the petitioner in the amount of \$2,318.31 during the period of August 1, 2012 to February 28, 2013, due to his failure to timely report new employment and income which resulted in household income above the BadgerCare income eligibility limit during the entire overpayment period.

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 October, 2013

\sGary M. Wolkstein
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 October 1, 2013.

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