



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/149528

PRELIMINARY RECITALS

Pursuant to a petition filed May 20, 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 June 24, 2013, at La Crosse, Wisconsin. At the request of the parties, the record was held open for two weeks for the submission of written closing arguments to DHA.

The issue for determination is whether the county agency is correctly pursuing a BadgerCare (BC) Plus overpayment against the petitioner in the amount of \$1,865.87 during the period of December 1, 2011 to October 31, 2012, due to petitioner's failure to timely report new employment and income at [REDACTED] and her employer health insurance through the school district resulting in BC overpayment from HMO paid capitation fees for petitioner.

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: Tom Miller, ES Supervisor

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 her minor son.
2. The petitioner received Badger Care (BC) Plus benefits for her household of two during the period of December 1, 2011 to October 31, 2012.
3. On June 27, 2011, petitioner applied for BadgerCare with a mail-in application and was pregnant at that time.
4. The petitioner signed Notices of Responsibilities which stated that petitioner must promptly and accurately notify the county agency of her household's income and changes to her employment or income or changes to her health insurance status.
5. On August 23, 2011, the petitioner began new employment as a teacher for the [REDACTED] District. The petitioner failed to timely report to the county agency that new employment or her income.
6. As of September 1, 2011, petitioner had employer health insurance (WEA Insurance Group) through the [REDACTED] District. Petitioner failed to timely report that employer health insurance to the county agency.
7. On September 28, 2012, the county agency discovered through a State wage match that petitioner had failed to report monthly earned income of \$3,032 from the [REDACTED] District for the 2011-2012 [REDACTED] year. That income was 240% of the Federal Poverty Level (FPL) for a group of two.
8. The petitioner was required to report that new earned income as a teacher to the county agency by about September 4, 2011, but failed to do so.
9. The petitioner's household's income was above the \$2,521.67 BadgerCare income limit (200% FPL) for a household of two during the period of December 1, 2011 through October 31, 2012.
10. Petitioner owed the county agency for total HMO capitation payments of \$1,865.87 paid on her behalf during the period of December, 2011 through October, 2012 by the State for a total BC overpayment of \$1,865.87.
11. The county agency sent a May 6, 2013 BC Overpayment notice to the petitioner stating that she received an MA overpayment of \$1,865.87 during the overpayment period of December 1, 2011 to October 31, 2012, due to client error. See Exhibit 2.
12. The basis for the overpayment was that petitioner failed to timely report by about September 4, 2011 to the county agency that she had begun new employment for the [REDACTED] District and her earned income from that employment. As a result, petitioner's household's income was above the BC income eligibility limit for a household of two for the entire overpayment period. In addition, petitioner failed to notify the county agency that she had health insurance through the [REDACTED] District as of September 1, 2011 and continuing.

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. On September 28, 2012, the county agency discovered through a State wage match that petitioner had failed to timely report her monthly earned income of \$3,032 as a teacher from the [REDACTED] [REDACTED] District for the 2011-2012 school year. That income was 240% of the Federal Poverty Level (FPL) for a group of two, and thus was above the 200% income eligibility limit of \$2,521.67 for a household of two during the overpayment period. As a result, the county agency correctly determined that the petitioner was overpaid \$1,865.87 for her failure to timely report accurate total household income when her earned income increased.

During the June 24, 2013 hearing, petitioner alleged in vague terms that she had spoken to some unnamed county worker to request that her BC be discontinued. However, petitioner was unable to establish with any reliable, specific testimony or evidence that she actually notified the county agency that she wanted for her BC benefits to be discontinued during the BC overpayment period. Furthermore, 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 December 1, 2011 to October 31, 2012. In addition, the county representative explained that petitioner was notified during July and August, 2011 of her responsibility to accurately and timely report all of her household' income information and any **changes** to household income, as she did sign "Notices of Responsibility." Moreover, petitioner was also unable to establish any error in the county's calculation of her BC overpayment, or that she had made any payments towards that overpayment. She was also unable to refute that the county agency correctly determined the HMO capitation fees which had been paid by the BC program on behalf of petitioner during the overpayment period in the total amount of \$1,854.87.

During the June 24, 2013 hearing, petitioner alleged that she did not understand the income limits or her responsibility to report employment and income changes. However, the county agency notified petitioner in writing that she needed to report changes (increases) in the household's income. There is no requirement that an MA overpayment be created by the intentional act of a BC member. Specifically 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 (FP 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."

Based upon the testimony and evidence during the hearing and in the itemization of her overpayment provided by the county (including detailed income information and capitation fees paid for petitioner), 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 her household income was above the income limit during the overpayment period or that she had improperly received MA payments on behalf of her household due to her household's income ineligibility. Accordingly, for the above reasons, I conclude that the county agency correctly determined that petitioner was overpaid \$1,865.87 in BadgerCare (BC) benefits for petitioner during the period of December 1, 2011 to October 31, 2012, due to petitioner's failure to timely report new employment and income at [REDACTED] [REDACTED] and her employer health insurance through the school district resulting in BC overpayment from HMO paid capitation fees for petitioner.

CONCLUSIONS OF LAW

The county agency is correctly pursuing a BadgerCare (BC) Plus overpayment against the petitioner in the amount of \$1,865.87 during the period of December 1, 2011 to October 31, 2012, due to petitioner's failure to timely report new employment and income at [REDACTED] [REDACTED] and her employer health insurance through the school district resulting in BC overpayments from HMO paid capitation fees for petitioner.

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 26th day of August, 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 August 26, 2013.

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