



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/149823

PRELIMINARY RECITALS

Pursuant to a petition filed June 06, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on July 23, 2013, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of medical assistance.

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: Diana Peterson

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.
2. The county agency notified the petitioner around April 20, 2013, that she received \$1,364.44 more in medical assistance than she was entitled to from October 2012 through February 2013.
3. There were three persons in the petitioner's medical assistance group until the number dropped to two in November 2012, after her son turned 19 years old.

4. The petitioner's household had the following income in the following months:
 - a. July 2012: \$1,896.77
 - b. August 2012: \$2,413.50
 - c. September 2012: \$2,055.41
 - d. October 2012: \$2,588.20
 - e. November 2012: \$2,621.68
 - f. December 2012: \$2,044.17
 - g. January 2013: \$2,682.93
 - h. February 2013: \$2,732.99
5. From February 2012 until February 2013, 200% of the federal poverty was \$3,181.67 for a three-person household and \$2,521.66 for a two-person household. *BadgerCare Plus Handbook*, § 48.1.2. One hundred fifty percent of the federal poverty level was \$2,121.11 for a three-person household and \$1,681.11 for a two-person household. (Extrapolated from previous figures.)
6. The petitioner did not report the change in her income to the county agency.

DISCUSSION

I note initially that this appeal may be late. Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. O'Brien and Associates sent an overpayment notice to the petitioner that was signed on April 20, 2013. She filed her appeal on June 6, 2013, or 47 days later. However, April 20 was a Saturday, and there is no indication that it actually went out that day. Moreover, the petitioner provided another notice of overpayment that included a repayment agreement, but this is on a facsimile transmission with an illegible date. Finally, the agency did not assert that the appeal was late. Therefore, I will review this matter on the merits

Medical assistance rules state that the Department "may" recover any overpayment that occurs because 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 [BadgerCare].
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.

Wis. Stat. § 49.497(1).

BadgerCare Plus provides medical assistance coverage to children under 19 and their parents or caretakers. Wis. Stat. § 49.471; *BadgerCare Plus Eligibility Handbook*, § 2.1. Unless they are pregnant, adults are ineligible if their household income exceeds 200% of the federal poverty limit. Wis. Stat. § 49.471(4)(a). The Department now requires adults to pay a premium if their income exceeds 130% of the federal poverty level, but at the time of the alleged overpayment their income had to exceed 150% of the federal poverty level. *BadgerCare Plus Handbook*, § 48.1.2. Recipients must report any change of income that affects their benefits to the agency by the 10th day of the month following the change. *BadgerCare Plus Eligibility Handbook*, § 27.3. Agencies must "use the actual income that was reported

or required to be reported in determining if an overpayment has occurred.” *BadgerCare Plus Handbook*, § 28.4.2.

The petitioner’s income increased from \$1,896.77 in July 2012 to \$2,413.50 in August 2012. At that time, three persons were eligible for benefits in her household; 150% of the federal poverty level for a household this size was \$2,121.11. Because her income now exceeded this amount, she was liable for a premium, meaning she was required to report the change by the 10th day of the next month, or September 10, 2012. Any change in benefits would have first occurred in October 2012. The agency contends that she received \$1,364.44 more in medical assistance than she was entitled to from October 2012 through February 2013. It seeks to recover \$1,155.44 in per capita payments and medical benefits made on her behalf in November 2012 and January and February 2013, finding that she was ineligible because her income exceeded 200% of the federal poverty level during those months. It also seeks to recover a \$116 premium for October 2012 and a \$92 premium for December 2012; she was eligible during those months, but her income required a premium that had not been paid. These amounts are all based upon her actual income, as required by *BadgerCare Plus Handbook*, § 28.4.2.

The petitioner does not challenge these calculations. Rather, she contends that she did notify the agency of her increased income. Her file contains several notes in the time period in question. A note dated June 26, 2012, indicates that she called to report that her work hours had decreased and that she would probably not receive any more child support because the father of her child had terminal cancer. She called on July 2, 2012, to add her son back onto her BadgerCare Plus because his father lost his insurance. She called on July 11, 2012, to inquire about receiving a BadgerCare Plus refund. It is possible, but unlikely, that the agency kept proper notes only when she reported an event that might increase her benefits. But the agency is not required to provide absolute proof. Rather, its burden is by the preponderance of the credible evidence, a fairly low standard that requires only that it prove that a particular event is more likely than not to have occurred. Given that the agency has significant evidence of receiving information from the petitioner that increased her benefits but none of receiving information concerning increased wages, and also that she submitted no evidence such as telephone, fax, or computer records supporting her contention that she had notified the agency any increased income, I find that preponderance of the evidence indicates that she did not notify it of the change in her income. Therefore, I uphold the agency’s overpayment finding.

CONCLUSIONS OF LAW

The petitioner must repay \$1,364.44 in medical assistance benefits she that she was not entitled to receive from October 2012 through February 2013 because she did not report an increase in income to the agency.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 15th day of August, 2013

\sMichael D. O'Brien
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 15, 2013.

Polk County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability