



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/149957

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on July 10, 2013, at Fond du Lac, Wisconsin.

The issue for determination is whether the county agency is correctly seeking recovery of BadgerCare (BC) overpayments to the petitioner during the period of July 1, 2010 through September, 2011, due to failure to timely report to the county agency his monthly permanent disability checks.

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: Deborah Bohlman, ESS

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County who resides with his wife, [REDACTED], and their one minor child. Petitioner had an ongoing BadgerCare (BC) case for his household of three.

2. On June 9, 2010, petitioner completed a telephone interview for his annual BC renewal. He reported his earned income at [REDACTED], his temporary disability workmen's compensation payments from Indianan Insurance, and [REDACTED]'s unemployment compensation. Petitioner signed that renewal application.
3. The petitioner received temporary workmen's compensation of \$234.04 for the months of July, 2010 through November, 2010.
4. Petitioner received BadgerCare (BC) benefits for a household of three during the period of July 1, 2010 through September, 2011.
5. On December 28, 2010, petitioner in his six month report form (SMRF), petitioner reported petitioner's income at [REDACTED] and [REDACTED]'s employment at [REDACTED].
6. The petitioner completed his annual renewal application on June 7, 2011 reporting his employment/income at [REDACTED] and [REDACTED]'s employment at [REDACTED].
7. On December 1, 2011, petitioner in his six month report form (SMRF), petitioner reported his earned income at [REDACTED] and [REDACTED]'s employment at [REDACTED].
8. On March 22, 2012, the county agency discovered from Indiana Insurance representative [REDACTED] that petitioner had been receiving monthly permanent disability benefits of \$1,135.33 from May, 2010 through February, 2012, but petitioner failed to timely notify the county agency of that disability unearned income.
9. The petitioner's corrected household income was above the 150% Federal Poverty Level (FPL) which required premiums to be paid for petitioner and his wife. The following BC premiums were not timely paid by petitioner: a) August, 2010 - \$138; b) September, 2010 - \$147; c) October, 2010 - \$148; d) November, 2010 - \$136; e) February, 2011 - \$54; f) March, 2011 - \$141; g) April, 2011 - \$134; h) June, 2011 - \$54; i) July, 2011 - \$54; j) August, 2011 - \$134; and k) September, 2011 - \$54 for total unpaid BC premiums of \$1,194.00.
10. The county agency sent a May 29, 2013 Notice of BadgerCare Overissuance to the petitioner stating that he had received \$1,194.00 in BC overissuances during the period of July 1, 2010 through September, 2011, due to failure to timely report to the county agency his monthly permanent disability checks of \$1,135.33 which thus required BC premiums to be paid for petitioner and his wife.
11. The petitioner's remaining BC overpayment was \$1,194.00 of the July 10, 2013 hearing date.

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.

During the July 10, 2013 hearing, the county agency representative, ESS Deborah Bohlman, established with reliable evidence that the petitioner failed to timely report his monthly permanent disability benefits of \$1,135.33 from May, 2010 through February, 2012 to the county agency. As a result, petitioner's monthly permanent disability unearned income was not budgeted as income to the BC household in determining the petitioner's BC household eligibility and BC premiums. The county agency established that petitioner's corrected household income was above the 150% Federal Poverty Level (FPL) which required premiums to be paid for petitioner and his wife. See Finding of Fact #9 above. The petitioner did not contest that he and his wife had received BC benefits during the period of July, 2010 through September, 2011. Furthermore, petitioner did not offer any reliable evidence to convincingly refute the accuracy of the county agency's BC overpayment determination of \$1,194.00 for that overpayment period.

During the hearing, petitioner was unable to provide any reliable testimony or evidence to refute that the county agency was correctly pursuing this BC overpayment against him. The petitioner contended that it was unfair that the county agency was seeking recovery of the overpayment. Petitioner also explained that he has many monthly expenses, and cannot afford to repay any BC benefits. 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 answers during the hearing and in the detailed itemization of his overpayment provided by the county regarding unpaid BC premiums for petitioner and his wife, the petitioner was provided a full explanation of his 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 required that petitioner and his wife pay BC premiums during the period in question which were unpaid. Accordingly, for the above reasons, I conclude that the county agency correctly determined that petitioner was overpaid \$1,194.00 in BadgerCare (BC) benefits for petitioner and his wife during the period of July, 2010 through September, 2011, due to failure to timely report to the county agency his monthly permanent disability checks which began May, 2010.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of BC overpayments to the petitioner during the period of July 1, 2010 through September, 2011, due to failure to timely report to the county agency his monthly permanent disability checks which began May, 2010.

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 5th day of September, 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 September 5, 2013.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability