



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/150009

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 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 August 28, 2013, at Balsam Lake, Wisconsin. A hearing scheduled of July 25, 2013, was rescheduled at the petitioner’s request.

The issue for determination is whether the county agency correctly determined the amount of the petitioner’s overpayment of medical assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Richard A. Lavigne, Jr.
32 N Bassett St
Madison, WI 53703

Respondent:

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

By: Linda Neely

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. O'Brien & Associates, acting on the county agency's behalf, sent the petitioner an undated notice indicating that she must repay a \$984 overpayment of medical assistance that allegedly occurred from June 1, 2012, through December 31, 2012.
3. The petitioner and her two children had been receiving BadgerCare Plus since November 2011. She divorced the children's father on July 24, 2012. Her divorce decree gave each parent equal placement of the children. When she completed her BadgerCare Plus online renewal on November 28, 2012, she claimed only one of the children as part of her household, although both remained in the household at least half of the time.
4. The petitioner had the following income from April through December 2012::

a. April	\$2,048.04
b. May	\$2,240.04
c. June	\$5,087.06 (3 pay periods)
d. July	\$2,960.03
e. August:	\$2,912.77
f. September	\$3,153.32
g. October	\$2,953.77
h. November	\$4,657.32 (3 pay periods)
i. December	\$2,865.80
5. The federal poverty level for a three-person household in 2012 was \$1,590.84. *Medicaid Eligibility Handbook*, § 39.5 (release 12-01)

DISCUSSION

The department "may" recover any overpayment of medical assistance 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).

The petitioner has received BadgerCare Plus, which provides medical assistance coverage to children under 19 and their parents or caretakers, since November 2011. Wis. Stat. § 49.471; *BadgerCare Plus Eligibility Handbook*, § 2.1. Recipients must report any change of income or other circumstances that affects their benefits to the agency by the 10th day of the month following the change. *BadgerCare Plus Eligibility Handbook*, § 27.3. The agency contends that the petitioner received \$984 more in BadgerCare Plus than she was entitled to from June 1, 2012, through December 31, 2012, because she failed to report income that would have affected her eligibility. Unless they are pregnant, adults are ineligible if their household income exceeds 200% of the federal poverty limit. Wis. Stat. § 49.471(4)(a). Until July 1, 2012, adults to pay a premium if their income exceeded 150% of the federal poverty level. After that date, the threshold for paying premiums fell to 133% of the federal poverty level. *BadgerCare Plus Handbook*, § 48.1.2. A premium does not have to be paid on behalf of children until the household income exceeds 200% of the federal poverty level. *BadgerCare Plus Handbook*, § 19.1. The federal poverty level varies with the number of persons in a household.

When determining the petitioner's overpayment, the agency assumed there were two persons in her household because that is what she reported when she completed her online renewal on November 28, 2012. The petitioner contends that there were actually three persons—herself and her two minor children—but that she reported two because she misunderstood the program's rules. When she divorced her children's father on July 24, 2012, the divorce decree gave each parent equal placement of the children. This meant that both children were with her half of the time. She believed that because she had each child half of the time, she could only claim half of her two children, or one. In fact, if the parents have "reasonably equivalent placement," which is defined as each parent having the child "at least 40% of the time during a month," both parents can claim the child. *BadgerCare Plus Handbook*, § 2.2.1.2. The *Handbook* goes on to state:

In determining eligibility for the parents with equivalent placement, the child is considered to be residing in both of their homes. That means the child will be included in the group size for both cases and the child's income will also be counted in both cases.

Id.

Thus, had the petitioner reported her children correctly, she would have had her benefits determined as if it were a three-person household. (She concedes that the agency determined her income correctly.) This means that the main question is how much, if any, of the overpayment period should be based upon a two-person household. There is also a related question concerning when she had to report the increase in income.

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. This is based on the simple premise that the less money one has at any particular time, the less she can spend on medical care. The purpose of this rule is to ensure that an overpayment is based on the recipient's actual financial circumstances at the time of the of the alleged overpayment. One's financial circumstances depend not only on actual income but also on the number of persons in the household, which is why eligibility is determined in relation to the federal poverty limit rather than just upon income. From this, I find that any overpayment by the petitioner should be based not only upon her actual income but also upon the actual number of persons in her household. I am aware that her error caused the agency to determine that her household had three persons, but the purpose of overpayment collections is not to punish inadvertent errors but rather to recover payments that exceed what the person's financial circumstances should have entitled her to. I note that even if her benefits were based upon the number of persons she actually reported as living in her household, she did not incorrectly report her income until she filed her renewal application on November 28, 2012, so having one less person in the household probably would not have affected her benefits until January 2013, which is after the period of the alleged overpayment.

The petitioner would have had to report when her income exceeded 150% of the poverty level before July 2012 and when it exceeded 133% of the federal poverty level after this date. In 2012, 150% of the federal poverty level for a three-person household was \$2,386.25 and 133% was \$2,115.82. Her income first exceeded 150% of the federal poverty level in June 2012. This means that she should have reported her increased income by July 10, 2012, and the change would have gone into effect in August 2012. This is when any overpayment can begin. Her income never dropped below the reporting levels of 150% and 133% of the federal poverty level during the rest of the year.

Medical assistance policy states that when the amount or frequency of regularly received fluctuating income is known, the agency should average it over the period between payments. *BadgerCare Plus Handbook*, § 16.6. The petitioner's past income is known and undisputed. Although the rule concerning fluctuating income pertains primarily to determining future income, it is consistent with the principle of

basing an overpayment on the recipient's actual financial circumstances at the time of the of the alleged overpayment. Averaging her income for the six months from July through December 2012 gives a monthly average of \$3,250.50. I did not begin averaging in June, the first month her income exceeded 150% of the federal poverty level, or August, the first month she would be assessed an overpayment, because she was paid biweekly, which means she received three paychecks in a month every six months. In order not to have the month with the extra paycheck distort her average income, I used a six-month period to determine her income. The monthly premium in 2012 for an adult whose income was \$3,250.50 was 4.5% of her income, or \$146.27. *BadgerCare Plus Handbook*, § 48.1 (Release No. 12-02). Multiplying this by the five months of the overpayment period gives a total overpayment of \$736.35. Because this is less than the \$984 determined by the agency, I will remand this matter to them.

CONCLUSIONS OF LAW

1. The agency should consider the petitioner part of three-person household when determining the amount of her medical assistance overpayment because that is the actual number of persons that were in her household.
2. The agency cannot recover any medical assistance benefits provided to the petitioner before August 1, 2012, because she was not responsible for reporting any increase in income until July 10, 2012.
3. The petitioner received \$736.35 more in medical assistance than she was entitled to between August 1, 2012, and December 31, 2012.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days it reduce the amount of the overpayment of medical assistance attributed to the petitioner between June 1, 2013, and August 31, 2013, from \$984 to \$736.35.

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 September, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 17, 2013.

Polk County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
rlavigne@safetyweb.org