



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/150186

PRELIMINARY RECITALS

Pursuant to a petition filed June 24, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Ashland County Department of Human Services in regard to Medical Assistance, a hearing was held on September 19, 2013, at Ashland, Wisconsin. Hearings scheduled for July 25, 2013, and August 24, 2013 were rescheduled at the petitioner's request.

The issue for determination is whether the petitioner must repay an alleged 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: Beulah Garcia

Ashland County Department of Human Services
630 Sanborn Avenue
Ashland, WI 54806

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Ashland County.
2. The county agency alleges that the petitioner's household received \$5,010.98 more in BadgerCare Plus benefits than it was entitled to from September 1, 2011, through May 31, 2013.

3. There were four persons in the petitioner's household through September 2012 and three after then.
4. The petitioner failed to report that as of September, 2011, her and her spouse's income increased and her son turned 18 and was earning money.
5. The petitioner paid a premium of \$136 from September through November 2011 and in January and February 2012, \$54 in December 2011 and March 2012, \$10 in October and November 2012, and \$80 from January through April 2013.
6. For a four-person household, 200% of the federal poverty level was \$3,725 from September 2011 through February 2102 and \$3,841.66 from March through September 2012. For a three-person household, 200% of the federal poverty level was \$3,181.66 from September 2012 through February 2103 and \$3,255 since then. *BadgerCare Plus Handbook*, 50.1
7. The petitioner had the following household income from September 2011 through May 2013:

a. September 2011:	\$2,901.83
b. October 2011:	\$4,611.68
c. November 2011:	\$3,800.06
d. December 2011:	\$6,299.05
e. January 2012:	\$4,440.77
f. February 2012:	\$5,091.03
g. March 2012:	\$4,189.84
h. April 2012:	\$5,386.99
i. May 2012:	\$4,744.10
j. June 2012:	\$5,419.44
k. July 2012:	\$4,680.35
l. August 2012:	\$5,445.35
m. September 2012:	\$4,625.35
n. October 2012:	\$5,405.48
o. November 2012:	\$5,330.35
p. December 2012:	\$5,952.93
q. January 2013:	\$4,641.28
r. February 2013:	\$5,207.76
s. March 2013:	\$4,531.16
t. April 2013:	\$3,833.91
u. May 2013:	\$6,212.45

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 before September 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's household received \$5,010.98 more in BadgerCare Plus benefits than it was entitled to from September 1, 2011, through May 31, 2013, 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 had 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. Premiums vary with household income. *BadgerCare Plus Handbook*, § 19.2.

The BadgerCare Plus agency contends that the petitioner and her husband's income increased and that their son turned 18 and started earning money. The earned income of children in the household is exempt until that child turns 18 but is counted after they turn that age. *BadgerCare Plus Handbook*, § 16.2.6. The petitioner contends that she did not know she had to report changes of income. The Department's standard notices inform recipients of this need, but regardless of whether she received this notice, the overpayment statute requires her to repay any overpayment in which she did not report relevant information that caused the overpayment. The statute does not excuse an overpayment if the recipient was unaware of her obligation to report the information. This means that if anyone in the petitioner's household received enough additional income to affect the household's benefits, she must repay any resulting overpayment that occurred because she failed to report that additional 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 upon 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 upon the recipient's actual financial circumstances at the time of the alleged overpayment. If a person becomes ineligible for BadgerCare Plus, the agency must recover the amount of medical claims paid by the state plus the capitation rate paid on the person's behalf. Any premiums paid are deducted if the person becomes ineligible. If the person remains eligible, the agency must recover the difference in the premium paid and the amount that she should have paid. *Id.*

The petitioner states that her husband's income varied considerably from month to month. A look at *Findings of Fact, No 7* indicates that the agency considered this. Income between November and December 2011 and between April and May 2013 varied by about \$2,400, and there are other consecutive months where the difference is at least \$1,000. The agency provided documentation of the income it used, and I can find no error in its figures. Its calculations show that the petitioner's household income exceeded 200% of the federal poverty level in every month of the period in question except September 2011. This means she must repay any per capita payments or medical benefits paid on her household's

behalf from October 2011 through May 2013. (She and her husband did not receive any benefits from April through December 2012.) In addition, the premiums for their children increased as their income increased. However, in some months the actual premium paid was greater than the premium owed because the parents were no longer responsible for premiums once they were ineligible. The agency showed its calculations in *exhibit 2*. It claims that the parents received \$4,609.80 in benefits, including per capita payments made on their behalf during this period. It also claims that \$1,529.18 should have been collected for the children's premiums during this period. Finally, it claims that \$1,128 in premiums were actually paid. I have reviewed these figures and find no error. The net amount of these figures is \$5,010.98, which is the amount that the agency correctly determined is the overpayment.

CONCLUSIONS OF LAW

The medical assistance agency correctly determined that the petitioner's household received \$5,010.98 more in BadgerCare Plus benefits than it was entitled to from September 1, 2011, through May 31, 2013, because she failed to report increases in the household's income.

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 10th day of October, 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 October 10, 2013.

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