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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/150628

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 10, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on August 26, 2013, at Manitowoc, Wisconsin.

The issue for determination is whether the county agency correctly determined that petitioner was overpaid a total of \$1,559.98 in BadgerCare (BC) benefits (monthly BC payments, unpaid premiums and capitation fees for petitioner and her husband) during the period of November 1, 2012 to May 31, 2013, due to petitioner's failure to timely report her husband's employment and income which resulted in household income above the BadgerCare income eligibility limit during some of the overpayment period and unpaid BC premiums (for adults and three children) and unpaid capitation fees.

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: Lori Garceau, ES Manager  
Manitowoc County Department of Human Services  
3733 Dewey Street  
Manitowoc, WI 54221-1177

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County who resides with her husband, Eric [REDACTED], and their three minor children.
2. The petitioner received Badger Care (BC) Plus benefits for her household of five during the period of November 1, 2012 to May 31, 2013.
3. 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 household's income.
4. During petitioner's May 15, 2013 review, the county agency discovered that petitioner had failed to report her husband's employment and income from QPS began during September, 2012 (her husband's first paystub was September 27, 2012).
5. The petitioner was required to report her husband's new employment and income at QPS to the county agency by October 10, 2012, but failed to do so.
6. The petitioner's husband, Eric [REDACTED], had the following monthly earned income at QPS which was not reported to the county agency: a) November, 2012 - \$2,145; b) December, 2012 - \$2,260; c) January, 2013 - \$1,760; d) February, 2013 - \$1,520; e) March, 2013 - \$1,745; f) April, 2013 - \$1,659; and g) May, 2013 - \$1,659.
7. The petitioner had monthly earned income of \$1,035 during the period of November, 2012 through May, 2013.
8. The petitioner's household's income was above the BadgerCare income limit of \$4,501.66 (200% FPL) for a household of five during the period of November and December, 2012. Petitioner owed the following BC premiums for herself and her husband which were not paid: a) January, 2013 - \$196.63; b) February, 2013 - \$185.83; c) March, 2013 - \$195.96; d) April, 2013 - \$192.09; and May, 2013 - \$192.09 for a total unpaid BC premiums of \$962.60. That overpayment notice also indicated a \$60 BC overpayment for her three children during the two month period of November and December, 2012, due to unpaid monthly premiums for her three children (\$10 per child per month).
9. Due to petitioner's household income, the petitioner owed BC capitation fees of \$303.74 and her husband owed BC capitation fees of \$204.76 during the period of January through May, 2013 which were not paid to the county agency.
10. The county agency sent a June 21, 2013 BC Overpayment notice to the petitioner stating that she received an MA overpayment of \$1,559.98 during the overpayment period of November 1, 2012 to May 31, 2013, due to client error.
11. The basis for the \$1,559.98 BC overpayment was that petitioner failed to timely report by October 10, 2012 to the county agency her husband's new employment and income at QPS which began during September, 2012. As a result petitioner's household's income (including her husband's earned income) was above the BC income eligibility limit for the months of November and December, 2012 and that she owed BC premiums for her household as well as capitation fees for petitioner and her husband.

## 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. During petitioner's May 15, 2013 review, the county agency discovered that petitioner had failed to report her husband's employment and income from QPS which began during September, 2012 (her husband's first paystub was September 27, 2012). The agency investigated the matter further, and confirmed that petitioner failed to report accurately her husband's monthly earned income and the total household income was above the income eligibility limit during November and December, 2012 for a household of five (and owed BC premiums and capitation fees). See Findings of Fact #8 - #11 above. As a result, the county agency correctly determined that the petitioner was overpaid \$1,559.98 for her failure to timely report accurate total household income when her husband's new employment and income began during September, 2012 and continued through May, 2013.

During the August 26, 2013 hearing 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 November 1, 2012 to May 31, 2013. Further, the county representative explained that petitioner was notified of her responsibility to accurately and timely report all of her household's income information and any **changes** (including new employment) 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 MA fees of \$28.88 on behalf of herself and \$60 for her children's premiums during their overpayment period.

During the August 26, 2013 hearing, petitioner alleged vaguely that she did not understand the income limits or when she needed to report the increase in her earned income. The petitioner was credible that she was confused, and that her failure to report her husband's new job and income was not intentional. However, such confusion did not eliminate the petitioner's responsibility to report changes as she was notified in writing and orally that she needed to report changes (increases) in the household's income. In addition, 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 (FPL for their group size by the 10<sup>th</sup> 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 her overpayment provided by the county (including detailed payment fees and capitation fees for petitioner and her husband), the 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 most of the overpayment period or that she had improperly received MA payments on behalf of her household due to her household's income ineligibility or unpaid BC premiums. Accordingly, for the above reasons, I conclude that the county agency correctly determined that petitioner was overpaid \$1,559.98 in BadgerCare (BC) benefits for petitioner and her husband and \$60 in BC overpayment for her children during the period of November 1, 2012 to May 31, 2013, due to petitioner's failure to timely report her husband's new employment and earned income which resulted in the total BC overpayments for her family.

### **CONCLUSIONS OF LAW**

The county agency correctly determined that petitioner was overpaid \$1,559.98 in BadgerCare (BC) benefits during the period of November 1, 2012 to May 31, 2013, due to petitioner's failure to timely report her husband's new employment and earned income which resulted in household income above the BadgerCare income eligibility limit for some months and unpaid monthly BC premiums and unpaid capitation fees.

**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 7th day of October, 2013

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\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 October 7, 2013.

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