FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/151312

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Florence County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on September 24, 2013, by telephone.

The issue for determination is whether the agency may recover an overpayment of BCP benefits to the petitioner for the October 2012 through June 2013 period.

There appeared at that time the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Sharon Johnson, ES Spec.
Florence County Department of Human Services
501 Lake Ave.
PO Box 170
Florence, WI 54121-0170

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Florence County.
2. BCP is a Wisconsin variant of Medical Assistance for families with children; it features higher income limits than "regular" MA. The petitioner's BCP household of two persons (self and minor

son) was certified for BCP prior to October 2012. She married in August 2012, and her son remained BCP certified from October 2012 through June 2013. The petitioner was required to pay a BCP premium from August 2012 onward as condition of continued eligibility for herself, but not for her son, due to increased income. The petitioner did not pay the adult premium, because she no longer needed health insurance for herself after her marriage. On October 16, 2012, the Department issued written notice to the petitioner advising that her adult BCP was being discontinued effective November 1, 2012, for premium nonpayment. The notice further advised that the son remained eligible without a premium.

3. The petitioner performed a face-to-face review with an agency worker in Florence County in July 2012. At that review, the petitioner advised the agency of her impending marriage, and noted that her married household income would be too high for her to continue to qualify for adult BCP. A conversation ensued regarding BCP coverage for the petitioner's son. The petitioner disclosed that the son would be covered by her husband's policy, and the agency worker suggested that the petitioner might wish to continue with the son's BCP coverage as a supplemental coverage of the husband's employer-based coverage. The petitioner agreed to continue her son's coverage on that basis, so she was not concerned when she continued to receive eligibility notices that showed that her son was eligible for BCP without a premium.

4. From July 2012 through June 2013, the agency did not issue a verification request for the husband's income. The Department continued to certify the petitioner's son for BCP after the review in 2012 and into 2013, because it was not counting the husband's income. Without his income, the child was BCP eligible without a premium. If his income had been included, the child would have been eligible for BCP with a $97.53 monthly premium.

5. The petitioner's case underwent a periodic review in June, 2013. As part of that review process, the petitioner listed her husband's income. With that income information, the Department discontinued BCP for the petitioner's child effective July 1, 2013, due to excess income.

6. When the Department recalculated BCP eligibility for October through June, it determined that the household had been overpaid $877.77 (son's $97.53 monthly premium x 9 months) for the period. A *Medicaid/BadgerCare Overpayment Notice* and worksheets were issued to the petitioner on July 24, 2013. The *Notice* advises that the petitioner was overpaid $877.77 for the period, allegedly due to the recipient's reporting error.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect 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.wisconsin.gov/bcplus/bcplus.htm.

The petitioner did not deny the wages attributed to her household by the agency at hearing. However, she argues that she did not intentionally withhold information from the agency, and that she did not fail to tell the agency that she was getting married to a man whose income put the household's financial eligibility into question. She credibly testified to a conversation with her review worker from 2012 (not the worker present at this hearing), in which the worker suggested that she retain BCP coverage for her child. The petitioner credibly testified that, without the worker's incorrect suggestion, she would have requested discontinuance of BCP for her child, as she was about to begin receiving coverage for the child through her husband's insurance. This makes sense to me.

In Foodshare and Childcare overpayment cases, overpayments must be recovered, even if the overpayment was the fault of the agency. Medicaid/BCP overpayment recovery is different: a recoverable overpayment cannot be caused by agency action. I believe that the overpayment was caused by the agency here, so it is not recoverable.

CONCLUSIONS OF LAW

1. The Department incorrectly determined that the $877.77 overpayment to the petitioner's BCP household from October 2012 through June 2013 is recoverable from the petitioner.

THEREFORE, it is **ORDERED**

That the petition is remanded to the Department with instructions to cease recovery on the $877.77 overpayment claim (#[redacted]) against the petitioner. This action shall be taken within 10 days of the date of this Decision.

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 1st day of October, 2013

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\sNancy J. Gagnon
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 1, 2013.

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