



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/152022

PRELIMINARY RECITALS

Pursuant to a petition filed September 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Monroe County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on October 10, 2013, by telephone.

The issue for determination is whether the petitioner was overpaid BCP benefits for the November 1, 2012 through August 31, 2013, period.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tom Miller, Supervisor

Western Region for Economic Assistance Consortium
LaCrosse, WI 54602-4002

(with Nicole Woxlund, O'Brien & Associates/overpayment calculator)

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.
2. The petitioner received BCP as a household of four persons (self and 3 minor children) from at least November 2012 through August 2013.

3. On September 4, 2013, a *Notice and Repayment Agreement for...BadgerCare Plus Overpayment* was sent to the petitioner, advising that she had been overpaid \$3,616.11 in BCP for the 11/1/12 – 8/31/13 period (claims # [REDACTED], # [REDACTED]). Exhibit 1. The overpayment was due to client error.
4. The petitioner has two children in common with Mr. [REDACTED] [REDACTED]. She, [REDACTED], and their children lived together as of October 2012, at [REDACTED], [REDACTED], Wisconsin [REDACTED]. The petitioner's name is on the lease for that residence from at least December 2012 through August 2013.
5. The petitioner had a falling out with Mr. [REDACTED] in late December 2012, and briefly lived with her aunt, [REDACTED] [REDACTED], at [REDACTED], [REDACTED], Wisconsin. She took one of her children with her. The petitioner did not report this event to the Department. She returned to Mr. [REDACTED] at their [REDACTED] residence by February 2013.
6. The petitioner had another falling out with Mr. [REDACTED] in mid-May 2013, after which she and one child again moved in with her aunt. The petitioner did not report this event until June 12. She returned to Mr. [REDACTED] at their [REDACTED] residence in mid-June, and reported his presence in her household to the agency on June 20, 2013.
7. Mr. [REDACTED] was employed throughout the period. The petitioner earns approximately \$16,000 annually, and Mr. [REDACTED] earns more than that. The petitioner did not supply the contract investigator with a signed release form (such a form was given to her) to allow wage information and insurance access verification with Mr. [REDACTED]'s employer.

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>.

Department policy then instructs the agency, in a “no eligibility” case, to base the overpayment determination on the actual MA/BCP charges paid, plus any premiums that would have been owed. *BCPEH*, §28.1 – 28.2. The petitioner does not challenge the accuracy of the MA charges, the arithmetic of the agency’s overpayment calculation, or the fact that Mr. ██████’s income put the household over the income eligibility limit (200% of the federal poverty level). Wis. Stat. §49.471(4)(a). Rather, the petitioner explained that her failure to report Mr. ██████’s presence in the household was a misunderstanding.

The preponderance of the evidence supports a finding that the petitioner and Mr. ██████ were living together for the bulk of the overpayment period. Their two separations were brief. To avoid this overpayment, the petitioner should have reported Mr. ██████’s presence in her household when she applied in December 2012.

Even if she briefly left ██████ in December, the petitioner then failed to report this change. The BCP statute requires the recipient to report changes that might affect eligibility. Wis. Stat. §49.471(6)(h). See in accord, *BCPEH*, §27.2. Significantly, however, the petitioner did report Mr. ██████’s presence in her household on June 20, 2013. The Department should have acted on this change to close her case for July and August 2013. Because the Department could not have closed the case for July due to the 10-day notice requirement, and simply did not close the case for August 2013, the overpayments for those two months cannot be recovered from the petitioner. The *BCPEH* states as follows:

28.3 NON-RECOVERABLE OVERPAYMENTS

Do not initiate recovery for a BC+ overpayment if it resulted from a non-member error, including the following situations:

1. The member reported the change timely, but the case could not be closed or the benefit reduced due to the 10-day notice requirement.
2. Agency error (keying error, math error, failure to act on a reported change, etc).
3. Normal prospective budgeting projections based on best available information.

Thus, I will direct the Department to reduce the BCP overpayment by the amounts attributable to July and August, 2013 coverage. I cannot determine those amounts myself, based on the evidence in the hearing record.

CONCLUSIONS OF LAW

1. The petitioner falsely reported Mr. ██████ as being out of her household at application in 2012, resulting in the creation of a BCP overpayment.
2. The county agency correctly determined that the petitioner was overpaid MA/BCP fees during the November, 2012 through June 2013, period.
3. The petitioner shall not be required to repay any overpaid MA/BCP for the July 2013 through August 2013 period.

THEREFORE, it is

ORDERED

That the petition is remanded to the agency with instructions to redetermine the amount of the petitioner's MA/BCP overpayment in accord with Conclusions of Law #2 and #3 above. The agency shall not include MA/BCP payments made from July 2013 through August 2013 in the overpayment total. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 28th day of October, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 October 28, 2013.

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