



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/152617

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 3, 2013, under Wis. Stat., §49.45(5), to review a decision by the Manitowoc County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on November 19, 2013, by telephone.

The issue for determination is whether the agency correctly determined an MA overpayment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Diane Strickstra  
Manitowoc County Dept. of Human Services  
3733 Dewey Street  
Manitowoc, WI 54221-1177

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. Petitioner received BadgerCare Plus (BC+) MA from 2011 through 2013. She had a review in August, 2011 and was found to be eligible for continued BC+. Soon after that review petitioner's income increased to more than twice its previous level. She did not report the increase.
3. The increased income would have made petitioner ineligible for BC+ as of October, 2011, and her children would have remained eligible with premiums.

4. Petitioner was scheduled for another review in August, 2012. She did not respond to the review request, so an administrative review was done and eligibility continued for another year.
5. By a notice dated August 22, 2013, the agency informed petitioner that she was overpaid \$11,458.78 in MA from October, 2011 through July, 2013

### DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(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.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Petitioner thought that because she did not use BC+ after her own insurance started in December, 2011, there would be no BC+ payment and the case would close. However, the MA program pays HMO premiums every month, and any health care not covered by private insurance would be billed by the provider to MA because petitioner's eligibility still showed on the state system.

BC+ recipients are required to report any changes in income that could affect eligibility or premiums. Wis. Admin. Code, §DHS 104.02(6); BC+ Handbook, App. 27.3. Petitioner should have reported the change in her income in September, 2011.

I note that petitioner included information about her August, 2011 review in the materials she sent for the hearing, asking "how could they continue if I didn't review or provide verifications?" I agree with that question, but petitioner did do a review in August, 2011. A review will be valid for one year unless the person reports a change, and petitioner's failure to report the change led to a BC+ overpayment.

I disagree with the overpayment for the period September 1, 2012 and thereafter. Petitioner did not respond to review requests for the review due by the end of August, 2012. That the agency went ahead and did an administrative review was the agency's error since all notices sent to BC+ recipients tell them that failure to complete a review will lead to the case closing. Thus the overpayment claim is upheld for the period October 1, 2011 through August 31, 2012, but reversed for the period after that date.

**CONCLUSIONS OF LAW**

1. Petitioner was overpaid BC+ MA beginning October 1, 2011 because she failed to report an increase in her income.
2. The agency may not recover the portion of the overpayment for the period beginning September 1, 2012 because it continued petitioner's BC+ erroneously after she failed to complete a review in August, 2012.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to rescind the part of overpayment claim in this case for the period September 1, 2012 and thereafter, and thus to amend the overpayment to cover only claims for the period October 1, 2011 through August 31, 2012. The county shall make the changes and inform petitioner of the amended claim amount within 10 days 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 26th day of November, 2013

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\sBrian C. Schneider  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 26, 2013.

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