



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/152667

PRELIMINARY RECITALS

Pursuant to a petition filed October 09, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Calumet County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on December 03, 2013, at Oshkosh, Wisconsin.

The issue for determination is whether petitioner is liable for overpaid BadgerCare Plus benefits.

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, Room 651
Madison, Wisconsin 53703

By: Lynn Brenner

Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner resides with his girlfriend, their son, X.H., and two other minor children of his girlfriend.
3. Petitioner's girlfriend sought and obtained BadgerCare Plus benefits for her three children.

4. Due to petitioner's girlfriend's error in not informing the respondent that she was living with petitioner, and her error in not informing the respondent of correct household income, BadgerCare Plus overpayment claims were established.
5. On or about October 7, 2013, Respondent sent petitioner a Notice and Repayment Agreement, identifying petitioner as a liable party for Overpayment Claim No. [REDACTED]. Exhibit 1.
6. Overpayment Claim No. [REDACTED] includes BadgerCare Plus overpayments made on behalf of all three of petitioner's children.

DISCUSSION

This case is a companion to *DHA Decision* MOP/148641; Petitioner is the boyfriend of the petitioner identified in Case No. MOP/148641. That prior decision found that the respondent had correctly determined liability for an overpayment due to client error. The Findings of Fact in that decision included the following:

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County who resides with her boyfriend and her three children. Petitioner's boyfriend is the father of the petitioner's youngest child.
2. The county agency discovered that petitioner's boyfriend has resided in the petitioner's home since May of 2011, and that his income had not been timely reported to the county agency.
3. The petitioner and her three children received BadgerCare (BCP) benefits during the period of October, 2011 through June, 2012.
4. The petitioner failed to timely report to the county agency that her boyfriend resided in her household during the overpayment period and his earned income.
5. Petitioner's boyfriend's earned income was not included in determining petitioner's BCP eligibility for the entire BCP overpayment period of October, 2011 through June, 2012, creating petitioner's BCP overpayment.
6. On March 19, 2013, the respondent sent a Notification of BadgerCare Overpayment to petitioner informing that she was overissued \$5,216.30 in BCP benefits from July, 2010 through September, 2011, due to failure to report to the county agency accurate household members (her boyfriend in the home) and his earned income. The overpayment worksheet explained in detail how the \$5,216.30 overpayment had been calculated based upon BadgerCare benefits provided to petitioner and her three children during the overpayment period of October, 2011 through June, 2012.

DHA Decision MOP/148641.

The respondent now seeks to establish liability for the established overpayments against the instant petitioner. That liability would extend responsibility for all of petitioner's girlfriend's three children to petitioner; petitioner is the father of only one of the three children.

The respondent has failed to establish any basis for petitioner's liability for any overpayment made regarding the minor children of whom the petitioner is not the father. The *BadgerCare + Eligibility Handbook* specifically states:

If a minor received BC+ in error, make the claim against the minor's **parent(s) or legally responsible relative**, if the parent or legally responsible relative was living with the minor at the time of the overpayment.

BadgerCare + Eligibility Handbook § 28.4.4 (emphasis added). The petitioner is not the father of, nor legally responsible for, two of the minor children who are included in this overpayment. As such, he cannot be liable for the overpayment as it pertains to those two minor children. His only responsibility pertains to his son, X.H.

Post hearing, on December 19, 2013, petitioner submitted additional information. While the record was not held open after the date of the December 3, 2013, hearing, I will address the petitioner's submission, since it contains the same arguments submitted at hearing, along with selected excerpts from the *BadgerCare + Eligibility Handbook*. Petitioner argues, as he did at hearing, that X.H. was never eligible for BadgerCare coverage, since he was already covered by petitioner's outside insurance. He also repeats that he was court-ordered to provide this coverage, and he did.

However, the fact that X.H. was not eligible for BadgerCare Plus coverage when his mother applied does not equate to a finding of agency error here. As discussed in petitioner's girlfriend's case,

I note that petitioner's ACCESS application form date January 25, 2010 included petitioner's boyfriend's name under the "Absent Parent Information" heading. Again, in her May 25, 2011 renewal form, petitioner added her boyfriend's name in a hand-written change under the heading "Absent Parent Information." Petitioner then testified at hearing that she started living with her boyfriend in May of 2011. Petitioner claims that she called the respondent to report that he was living with her, but Case Comments do not verify this. Petitioner provided nothing to corroborate her notification claim implying that the respondent was at fault.

DHA Decision MOP/148641. The agency provided X.H. with BadgerCare coverage based upon the information supplied by petitioner's girlfriend. That the information was not accurate is not the fault of the agency. Petitioner's girlfriend specifically sought benefits for X.H., and these were provided based upon the information that X.H.'s mother provided. While I can somewhat empathize with petitioner's argument since it appears that he was not aware of his girlfriend's actions, the fact remains that the petitioner's girlfriend's error caused the overpayment, and as the parent of a minor who received benefits in error, petitioner is a liable party.

CONCLUSIONS OF LAW

1. Petitioner is liable for overpaid BadgerCare Plus benefits provided to petitioner's son, X.H.
2. Petitioner is not liable for overpaid BadgerCare Plus benefits provided to petitioner's girlfriend's minor children who are not petitioner's children.

THEREFORE, it is

ORDERED

This matter shall be remanded to the respondent to review and re-determine petitioner's liability regarding Claim No. [REDACTED]. Specifically, petitioner's liability shall be limited to the overpayment specifically attributed to his son, X.H. New notice, including appeal rights, shall be provided to petitioner establishing his liability, if any. All actions required by this Order shall be completed within 10 days following issuance 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, Room 651, 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 23rd day of December, 2013

\sPeter McCombs
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 December 23, 2013.

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