



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/152696

PRELIMINARY RECITALS

Pursuant to a petition filed October 7, 2013, under Wis. Stat., §49.45(5), to review a decision by the Northern IM Consortium to recover Medical Assistance (MA), a hearing was held on October 30, 2013, by telephone.

The issue for determination is whether petitioner was overpaid MA because she failed to report income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Beulah Garcia
Northern IM Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner applied for BadgerCare Plus (BC+) MA on February 1, 2012. She reported being off work due to an illness, and at that point only her husband was working. She sought coverage back to January 1, 2012.
3. By a notice dated March 1, 2012, the agency informed petitioner that the household was eligible for BC+ beginning April 1, 2012 with no premium. There was no eligibility for January, 2012 because income was above 150% of poverty.

4. Petitioner went back to work in late February, 2012. She did not report her return to work.
5. Petitioner reported being back to work on September 25, 2012. BC+ closed for the adults effective November 1, 2012. BC+ for their daughter continued.
6. By a notice dated September 21, 2013, the agency informed petitioner that she was overpaid \$2,606.73 in BC+ from April 1, 2012 through March 31, 2013. The determination was taken by using income earned by the household and comparing it to the income limits. A small portion of the overpayment (\$124) was for premiums for petitioner's daughter from December, 2012 through March, 2013. The claim numbers were [REDACTED] and [REDACTED].

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.

In determining the overpayment the agency utilizes actual income received by the household. While the agency received the actual income from petitioner's husband's employer, it received no response from petitioner's employer. As a result it had to use quarterly income reported to the State, divided by three, for petitioner.

The results showed that the adults would not have been eligible for BC+ for the entire period April 1, 2012 through October 31, 2012. In 2012 adults were ineligible for BC+ if income was more than 200% of the poverty level. MA Handbook, Appendix 16.1. When actual income was determined, the household was over that threshold every month. In addition actual income would have resulted in the child having premiums beginning December, 2012.

Petitioner complained that the March 1, 2012 notice told her that she had to report a change if income was above \$2,008, and the notice itself showed income to be higher than that amount. While the notice is ridiculous, of course, it is a red herring because petitioner surely should have reported that she returned to work. That is the reason for the overpayment, and I must conclude that the overpayment was determined correctly.

Petitioner also complained that BC+ was not backdated. The majority of her medical bills were incurred in January, 2012. She applied for BC+ on February 1, 2012 when she came in for her FoodShare interview. In 2012 BC+ could be backdated to a month prior to application only if household income was below 150% of poverty in the backdated month. Petitioner's household income was higher than 150% of poverty in January, 2012.

It is not clear to me why BC+ was not granted in February and March, 2012. However, petitioner would have had to appeal the denial for those months within 45 days of the denial; see page 6 of the March 1 notice. Furthermore it appears that March, 2012 also would have been an overpayment, and she potentially would have been eligible only in February.

CONCLUSIONS OF LAW

Petitioner was overpaid BC+ because she failed to report a return to employment after a period of illness.

THEREFORE, it is

ORDERED

That 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 5th day of November, 2013

\sBrian C. Schneider
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 November 5, 2013.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability