



FH
3127059639

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/152846

PRELIMINARY RECITALS

Pursuant to a petition filed October 15, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance (MA), a hearing was held on November 21, 2013, at Janesville, Wisconsin.

The issue for determination is whether the petitioner was overpaid MA/BadgerCare Plus (BCP) benefits of \$287.65 for the December 2012 through April 2013 period.

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
Madison, Wisconsin 53703

By: Mary Donahue, ES Supr.
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # 3127059639) is a resident of Rock 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 household of four persons contained a minor

child who was certified for BCP from at least October 2012 through April, 2013. The household was required to pay a BCP monthly premium of \$44 as a condition of coverage, based on reported income of \$4,572.64. That income consisted of the petitioner's \$2,972.64 plus his wife's \$1,600 in earnings.

3. From October 2012 through April 2013, the petitioner did not report an increase in household income.
4. The petitioner's case was reviewed in May 2013, and updated earnings information was obtained. As part of that review process, the Department learned that the petitioner's wife's gross earnings had increased to \$2,686.37 monthly for October 2012, which was required to be reported by November 10, in time to affect benefits for December 2012. The petitioner's wife also had earnings of \$2,808.80 for November, \$1,950 for December, \$3,149.45 for January, \$3,006.97 for February, \$2,656.34 for March, and \$2,545.54 for April. *See*, Exhibit 5.
5. When the Department recalculated BCP eligibility for December 2012 through April 2013, it determined that the household had been overpaid \$287.65 (claim #9900384209) for the period. A *Medicaid/BadgerCare Overpayment Notice* and worksheets (dated 8/13/13) were issued to the petitioner on September 4, 2013. The *Notice* advises that the petitioner was overpaid due to failure to report increased income.
6. If the petitioner had timely reported the increased income by November, the minor child's premium would have increased from \$44 monthly to \$97.53 monthly. The overpayment amount is the difference between \$97.53 and \$44.00, multiplied by five months, plus a \$20 premium payment shortfall from March and April 2013.

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 an “underpaid premium” case, to determine the overpayment as follows:

If the case is still eligible for BC+ for the timeframe in question, but there was an increase in the premium, recover the difference between the premiums paid and the amount owed for each month in question. To determine the difference, determine the premium amount owed and view the premium amount paid on *CARES* screen AGPT.

BCPEH, § 28.4.2.

The petitioner did not deny the wages attributed to the household by the agency at hearing. He also did not deny receipt of the October 31, 2012, BCP notice that advised the household to report increased income to the agency, if household gross income exceeded \$4,772.49. *See*, Exhibit 6, p.5. There is no evidence in the record that the household reported increased income during the overpayment period. The petitioner asserted at hearing that he did not understand the consequences of the household’s increased income, and that if he had realized that he would be responsible for a \$97 monthly premium, as opposed to a \$44 monthly premium, he would have let his child go uninsured. That is not a successful defense to the overpayment determination, which was correctly made here.

CONCLUSIONS OF LAW

1. The Department correctly determined that the petitioner’s household was overpaid BCP benefits of \$287.65 from December 2012 through April 2013.

THEREFORE, it is

ORDERED

That 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 22nd day of November, 2013

\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 November 22, 2013.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability