



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/152234

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance, a telephonic hearing was held on October 23, 2013, at Green Bay, Wisconsin. At the request of petitioner, a translator ([REDACTED] [REDACTED]) was provided at the hearing who translated for the petitioner and his wife. At the request of the parties, the record was held open for written closing argument and any additional exhibits to be submitted by the county agency by November 13, 2013, with a response plus exhibits by the petitioner by December 4, 2013. The county agency timely submitted a detailed closing argument with Exhibits 4A to 11 to DHA and the petitioner. However, petitioner failed to submit any response whatsoever to DHA.

The issue for determination is whether the county agency is correctly seeking recovery of BadgerCare (BC) overpayments to the petitioner in the total amount of \$2,922.72 for the periods of March, 2011 and March 1, 2012 to August 1, 2012, due to petitioner's failure to timely report that he and his wife owned a business, [REDACTED], LLC and the income from that business resulting in household income above the BC income eligibility limit for 2012 and unpaid BC premiums for petitioner and his wife during the month of March, 2011.

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: Amanda Huilar, ESS

Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County who resided with his wife, [REDACTED], and their three children during 2009.
2. On or about April 1, 2004, the petitioner and his wife bought a business, [REDACTED], LCC, which was a restaurant and grocery store. [REDACTED] was located at [REDACTED] in [REDACTED]. See Exhibit F. Petitioner sold this business during April, 2012 on land contract to the [REDACTED], LLC for which they received a down payment and monthly payments.
3. The petitioner applied for BadgerCare Plus (BC) and FoodShare (FS) on or about September 11, 2008 for a household of four.
4. The county agency sent a September 12, 2008 notice to the petitioner which approved that BC and FS application but for a BC and FS group of four (without including their daughter, NM, who was an ineligible student).
5. At time of application, petitioner only reported income of \$1,721 from his earned income from [REDACTED]. See Exhibits 5, 6 & 8.
6. As of January, 2009, [REDACTED] business began to make a profit for petitioner and his wife, but petitioner failed to report that self-employment business income to the county agency in his January 13, 2009 six month report form (SEIRF). See Exhibits 3, 5 & 6.
7. If petitioner had reported the [REDACTED] business income, then that increased income would have resulted in petitioner's BC household being ineligible for BC during 2012 due to income above the income eligibility limits for the period of March, 2012 through August, 2012.
8. After receiving a July 10, 2012 "tip" the county agency began investigating the petitioner's failure to disclose the ownership of the business, [REDACTED] and the income from that business.
9. The petitioner's earned income from [REDACTED] was confirmed in State Wage Records. See Exhibit 8.
10. The self-employment income for petitioner and his wife from [REDACTED] are indicated on Exhibit 9.
11. The petitioner's household had the following gross earned and unearned income during the 2012 overpayment period: a) March, 2012 - \$3,888.08; b) April, 2012 - \$4,677.83; c) May, 2012 - \$5,215.50; d) June, 2012 - \$4,027.63; e) July, 2012 - \$4,273.62; and f) August, 2012 - \$4,338.40.
12. The petitioner's household's income was above the BadgerCare income limit of \$3,841.67 (200% FPL) for a household of four during the period of March, 2012 through August, 2012.
13. Petitioner also owed the BC premiums for himself and his wife totaling \$136.00 for the month of March, 2011. There were no unpaid BC monthly premiums for his two children.
14. The county agency sent an August 30, 2013 BadgerCare (BC) Overpayment notice to the petitioner stating that he received an MA overpayment of \$2,786.72 during the overpayment period of March 1, 2012 through August 31, 2012, due to failure to timely report household income above the BC income eligibility limits for a group of four during that entire period.

15. The county agency sent a second August 30, 2013 BadgerCare (BC) Overpayment notice to the petitioner stating that he received an MA overpayment of \$136.00 during the overpayment period of March 1, 2011 to March 31, 2011 for his two children, due to unpaid BC premiums for the those two children who received BC benefits as part of his BC household.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (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.wi.gov/bcplus/> :

28.1 OVERPAYMENTS.

An “overpayment” occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. **Concealing or not reporting income.**
2. **Failure to report a change in income.**
3. Providing misinformation at the time of **application** regarding any information that would affect eligibility.

(Emphasis added).

28.2 RECOVERABLE OVERPAYMENTS.

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

1. Applicant /Member Error

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

...

2. Fraud. ...

BCPEH, §28.1 – 28.2.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

During the October 23, 2013 hearing, the county agency representatives, ESS Amanda Huilar and fraud investigator Diane Van Asten, presented a well-organized case, and established that the petitioner failed to timely disclose his business or timely report self-employment income from that business owned by him and his wife. As a result, petitioner's self-employment income was not budgeted as income to the BC or FS household in determining the petitioner's BC household eligibility and benefits during the periods of March, 2011 and March 1, 2012 through August, 2012. The county agency established that petitioner's gross household income was substantially above the income budgeted by the county (due to petitioner's failure to report income) resulting in the household income above 200% FPL during 2012. Finding of Fact #12 above. The petitioner did not contest that his household had received BC benefits during the month of March, 2011 and also during the period of March 1, 2012 through August 31, 2012. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's BC overpayment determination of a total of \$2,922.72 for those overpayment periods.

This Administrative Law Judge (ALJ) wanted to provide every opportunity for the petitioner to provide clear, reliable documentation regarding the report of his self-employment business and income from that business. Thus, the record was held open for written closing arguments and any additional exhibits to be submitted by the county agency with a response plus exhibits by the petitioner. The county agency timely submitted a detailed closing argument (with Exhibits 4A to 11) to DHA and the petitioner. However, petitioner failed to submit any response or evidence to DHA by December 4, 2013 or even by the date of this decision. See above Preliminary Recitals.

During the hearing, petitioner alleged that he and his wife were not fully aware that they were receiving BC or FS benefits during the overpayment period. However, such allegation is not credible as petitioner participated in submitting SMRFs to the county, participated in annual reviews, and were regularly in contact with the county agency from the time of their September, 2008 application until their FS benefits ended during March, 2010. See Exhibit 7A. The petitioner also alleged that he was not aware that he needed to report his business because it was not "profitable." However, the county agency persuasively responded with testimony and exhibits to establish that [REDACTED] was profitable as of January, 2009,

and thus petitioner was required to timely report such self-employment income to the county agency. Petitioner failed to do so. Moreover, the county agency submitted a detailed, convincing November 11, 2013 closing argument (with Exhibits 4A through Exhibit 11) which clearly documented that the county agency correctly and accurately established the FS overpayment against the petitioner. The petitioner failed to submit any closing argument to DHA to respond to the county's argument or additional exhibits.

The petitioner generally contended that it was unfair that the county agency was seeking recovery of the overpayment. During the hearing, petitioner's wife alleged in vague terms, with no documentation, that she did once verbally report the business to an ESS worker and said there was no income from that business. However, petitioner was unable to provide any reliable evidence of such reporting, especially given the multiple opportunities in SMRFs and review in which petitioner or his wife could have reported the full and accurate self-employment income from [REDACTED] but failed to do so. See above Findings of Fact.

The BadgerCare Plus Handbook provides that BC members must report their income changes when their total monthly gross income exceeds the percentages of the Federal Poverty Limit (FPL for their group size) by the 10th of the month following the month in which total income exceeds the previous threshold. BadgerCare Plus Handbook, section 27.3, "Income Change Report."

Based upon the answers during the hearing and in the detailed itemization of his overpayment provided by the county (including detailed payment fees and BC premiums for petitioner and his wife), the petitioner was provided a full explanation of his BadgerCare overpayment. The petitioner was unable to establish with any specificity any error on the part of the county agency in concluding that his household income was above the income limit during 2012 or that he had unpaid BC premiums due for his two children. Accordingly, for the above reasons, I conclude that the county agency correctly determined that petitioner was overpaid \$2,922.72 in BadgerCare (BC) benefits for petitioner and his household during the periods of March, 2011 and March 1, 2012 to August 1, 2012, due to petitioner's failure to timely report that he and his wife owned a business, [REDACTED], LLC and the income from that business resulting in household income above the BC income eligibility limit for 2012 and unpaid BC premiums for petitioner and his wife during the month of March, 2011.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of BadgerCare (BC) overpayments to the petitioner in the amount of \$2,922.72 for the periods of March, 2011 and March 1, 2012 to August 1, 2012, due to petitioner's failure to timely report that he and his wife owned a business, [REDACTED], LLC and the income from that business resulting in household income above the BC income eligibility limit for 2012 and unpaid BC premiums for petitioner and his wife during the month of March, 2011.

THEREFORE, it is

ORDERED

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, 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 31st day of January, 2014

\sGary M. Wolkstein
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 January 31, 2014.

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