



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/153135

PRELIMINARY RECITALS

Pursuant to a petition filed October 23, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washburn County Department of Social Services in regard to Medical Assistance, a hearing was held on November 21, 2013, at Shell Lake, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of medical assistance.

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: Aaron Borreson

Washburn County Department of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Washburn County. There are four other persons in her household, including one other adult.

2. The county agency notified the petitioner on November 11, 2013, that she was overpaid \$1,539.83 in medical assistance from September 1, 2012, through December 31, 2012, because she failed to report an increase in income.
3. The petitioner's total household income in June 2011 was \$3,480.73.
4. The county agency notified the petitioner in her explanation of benefits on June 11, 2012, that she must report by the 10th day of the following month if her income exceeded \$4,161.04.
5. The petitioner's household had the following income in the following months:
 - a. July 2012: \$6,281.06
 - b. August 2012: \$7,211.92
 - c. September 2012: \$5,380.62
 - d. October 2012: \$5,617.48
 - e. November 2012: \$4,088.28
 - f. December 2012: \$4,926.04
6. The petitioner did not report by August 10, 2012, that her income in July 2012 had exceeded \$4,161.04.
7. The BadgerCare Plus program paid a total of \$1,751.83 in capitation fees on behalf of the petitioner during September, October, and December 2012.
8. If the petitioner had reported her household income correctly, she would have owed \$212 less in premiums from September through December 2012.
9. The poverty level for a five-person household in 2012 was \$2,250.83. *Medicaid Eligibility Handbook*, § 39.5.

DISCUSSION

The Department seeks to recover \$1,539.83 of the BadgerCare Plus medical assistance benefits provided to the petitioner from September 1, 2012, through December 31, 2012, Medical assistance rules allow the Department to" recover any overpayment of medical assistance that occurs because 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 [BadgerCare].
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.

Wis. Stat. § 49.497(1).

Agencies must "use the actual income that was reported or required to be reported in determining if an overpayment has occurred." *BadgerCare Plus Handbook*, § 28.4.2. Overpayments are calculated by adding the per capita payments made on behalf of recipients in months they should not have been eligible and any increase in premium payments, and then subtracting any reduction that would have occurred in premiums already paid. *BadgerCare Plus Handbook*, § 28.4.2.

Unless they are pregnant, adults are ineligible for BadgerCare Plus if their household income exceeds 200% of the federal poverty limit. Wis. Stat. § 49.471(4)(a). At the time of the alleged overpayment, adults had to pay a premium if their household income exceeded 150% of the federal poverty level; a premium had to be paid on behalf of children if the household income exceeded 200% of the federal poverty level. Wis. Stat. § 49.271(1)(b). Premiums depend upon income. Recipients must report any change of income that affects their benefits to the agency by the 10th day of the month following the change. *BadgerCare Plus Eligibility Handbook*, § 27.3.

The petitioner's household income as of June 2012 was \$3,480.73. Her boyfriend, who lived with her, was unemployed and she received child support. The main source of her household's income was money she earned waiting tables at a resort in northern Wisconsin. This income increased significantly after June. It was \$6,281.06 in July and \$7,211.92 in August. Her income declined somewhat after August, as one would expect as the tourist season wound down, but it remained over 200% of the federal poverty level in every month through December, except November. Because the petitioner's income exceeded the reporting requirement in July, she should have reported the increase by August 10, and the change in eligibility would have gone into effect in September. As instructed by the *BadgerCare Plus*, the agency calculated the overpayment by adding the per capita payments it made on her behalf in the three months she would have been ineligible because her household income exceeded 200% of the federal poverty level, then adding the additional premiums she would have paid if her correct income had been used, and finally by subtracting any premiums she would not have owed. (She would not have owed premiums in the months her household income was over 200% of the federal poverty level because she would have been ineligible.) The BadgerCare Plus program paid a total of \$1,751.83 in capitation fees her behalf during September, October, and December 2012, the months she should have been ineligible because her household income exceeded 200% of the federal poverty level. The total amount of premiums she would have owed would have fallen by \$212 if her income had been reported correctly. I find no error in these figures.

The petitioner testified credibly that she did not intentionally fail to report her income, most of which was tips. Nevertheless, because she did in fact fail to report her change of income, she must repay the overpayment. That overpayment is \$1,539.83 from September 1, 2012, through December 31, 2012, as the agency correctly alleges.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner must repay \$1,539.83 of the medical assistance benefits she received from September 1, 2012, through December 31, 2012, because she failed to report a change of income that affected her eligibility.

THEREFORE, it is

ORDERED

The petitioner's appeal 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, 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 13th day of January, 2014

\sMichael D. O'Brien
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 13, 2014.

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