



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/153161

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 28, 2013, under Wis. Stat., §49.45(5), to review a decision by the Sauk County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on December 17, 2013, at Baraboo, Wisconsin. The record was held open 14 days for petitioner to provide additional information.

The issue for determination is whether petitioner was overpaid MA after starting a new job in late 2012.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kay Kippley  
Sauk County Dept. of Human Services  
P.O. Box 29  
Baraboo, WI 53913

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.
2. Petitioner received BadgerCare Plus (BC+) MA for a four-person household in 2012. His reported income was self-employment, listed as being \$1,984.92 per month.
3. Petitioner began a new job on November 26, 2012, with the first paycheck on December 7. His income from the job in December was \$2,415, and it increased in the months after.

4. The income from the new job was not budgeted. The county discovered the new job in 2013 when petitioner completed his BC+ review and noted the income on his review form.
5. The county sent the case for a possible overpayment. It added the employment income to petitioner's self-employment income and determined that the household was overpaid BC+ beginning in December, 2012.
6. By a notice dated September 21, 2013 the county informed petitioner that he was overpaid \$2,023 in MA from December, 2012 through July 31, 2013, claim nos. [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.

Petitioner testified that he remembered speaking to an agency worker when he started the new job. That is possible, but there is no record of any report in the system. He clearly did not intend to hide the new job because he was the person who reported it at his later review. Nevertheless, the income from the new job was not budgeted.

Petitioner testified during the hearing that he quit the self-employment after he started the new job. It is believable that a person would not be able to work a full-time job while working full-time self-employment at the same time. Petitioner sent me copies of his final bills from his self-employment, and they were dated November and December, 2012.

I conclude first that petitioner was not overpaid in December. He started his new job on November 26, 2012, and thus was not required to report until December 10. BC+ Handbook, Appendix 27.3. Any change would not take place until January 1, 2013.

I find that petitioner's testimony and evidence regarding the self-employment was credible. He had no self-employment income in January, 2013 and beyond. He still might have been overpaid some BC+ funds because his income averaged over \$3,500 per month in the months thereafter. I thus will remand the case to rescind the overpayments at issue in this appeal, but the county may still determine that

petitioner was overpaid BC+ for the period January 1 through July 31, 2013 based upon only his earned income from employment.

**CONCLUSIONS OF LAW**

1. Petitioner was not overpaid BC+ in December, 2012 because he was not required to report his new employment until December 10, 2012.
2. The calculation of a BC+ overpayment for the period January through July, 2013 was incorrect because it included self-employment income, and petitioner did not have self-employment income in 2013.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to rescind BC+ overpayment claim nos. [REDACTED] and [REDACTED] and to cease recovery of them. The county shall do so within 10 days of this decision. The county may still determine if there was an overpayment for the period January 1 through July 31, 2013 based only upon petitioner's employment income from The Electrician, Inc.

**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 6th day of January, 2014

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\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 January 6, 2014.

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