



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/153231

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services – Wis. Rapids in regard to Medical Assistance (MA)/BadgerCare Plus, a hearing was held on January 16, 2014, by telephone. A hearing set for December 19, 2013, was rescheduled at the petitioner’s request.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid BadgerCare Plus (BCP) benefits of \$2,064.00 for the September 2012 through September 2013 period.

There appeared at that time 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: Beulah Garcia, Resolution Coordinator
Northern IM Consortium

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood 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 BCP household of five persons was certified

for BCP from at least February 2012 through September 2013. No one was required to pay a BCP premium as a condition of coverage due to the low reported income (under 133% FPL). The household's eligibility was calculated on the basis of reported gross monthly household income of \$2,828 in earnings from Aspirus Hospital. *See*, Notice dated April 2, 2013.

3. From September 2012 through September 2013, the petitioner did not report an increase in her earnings. She did submit two paystubs with her reviews in March 2012 and March 2013.
4. The petitioner's case underwent a periodic review in September 2013. As part of that review process, the Department independently learned that the petitioner's gross earnings had increased, per a state database wage cross-match. The petitioner's monthly income exceeded the BCP 133% FPL premium liability limit for five persons from at least August 2012 through September 2013, which meant that the adults owed a premium, beginning with September 2012.
5. When the Department's contractor recalculated BCP eligibility for September 2012 through September 2013, it determined that the household had been overpaid \$9,611 for the period. A *Medicaid/BadgerCare Overpayment Notice* and worksheets were issued to the petitioner on October 3, 2013. Subsequently, a corrected *Notice* dated January 13, 2013, advised that the petitioner was overpaid \$2,064 for the September 2012 through September 2013 period.
6. Different premium and income eligibility rules apply to adults versus children. An adult is subject to a BCP premium liability when the household's income reaches 133% of the federal poverty level (FPL), and (unless self-employed) is not eligible for BCP *at all* when income exceeds 200% FPL. The petitioner's overpayment liability is only the amount of the premiums that the adults should have paid.

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 to make the overpayment determination as follows:

28.4.2 Overpayment Amount

Use the actual income that was reported or required to be reported in determining if an overpayment has occurred.

If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount.

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 third paragraph in this policy direction applies to this case, where the household's overpayment is only the amount of the premiums.

The petitioner did not deny the wages attributed to her by the agency at hearing. Rather, she asserted that her under-reporting of income was unintentional. The agency representative countered with the information that the petitioner only provided two paystubs for her three-paystub months (she is paid bi-weekly), and that the income figure used by the Department was repeatedly shown on notices (9) issued to the petitioner from April 12, 2012, through April 19, 2013. When the petitioner's monthly income increased above \$3,055 monthly, she had an obligation to report this to the Department. *E.g.*, the Department has now obtained the employer's wage report, which shows \$13,956.67 paid for the quarter (3 months) of October - December 2012. This averages out to much more than \$3,055 monthly, and this should have prompted the petitioner to report a spike in her income. She did not, and as a result she was overpaid. The petitioner did not supply a complete bi-weekly payment history/paystubs for 2012, so I cannot do a further refinement of exactly when the petitioner's pay increased and triggered the reporting requirement.

CONCLUSIONS OF LAW

1. The Department correctly determined that the adults in the petitioner's BCP household were overpaid BCP benefits of \$2,064 from September 2012 through September 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, 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 28th day of January, 2014

\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 January 28, 2014.

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