



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/153233

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 Marathon County Department of Social Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on December 10, 2013, at [REDACTED], Wisconsin.

The issue for determination is whether the petitioner was overpaid BCP benefits of \$218.96 for October 2013.

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 [REDACTED], Room 651
Madison, Wisconsin 53703

By: Ms. M. Yang, ES Spec.

Marathon County Department of Social Services
400 E. Thomas [REDACTED]
[REDACTED], WI 54403

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. On October 19, 2013, the Department issued a *Medicaid/BadgerCare Overpayment Notice* to the petitioner. It advised that the petitioner had been overpaid BCP for the month of October 2013,

in the amount of \$218.96. The alleged basis for the overpayment was that the petitioner's minor child was not residing with the petitioner or present for 40% of her placement time in the petitioner's home.

3. The petitioner and her minor child had a BCP household of two persons prior to and during October 2013. She has resided at her current address of [REDACTED] [REDACTED], for over two years. The petitioner married [REDACTED] [REDACTED] on September 18, 2013, and reported this fact to the economic support agency on October 2, 2013. [REDACTED] is not the father of the child. Mr. [REDACTED] began full time work at CFR Custom Fabrication on September 30, 2013. The BCP case closed effective November 1, 2013. The petitioner is not contesting the case closure.
4. The petitioner has a separate bedroom for her child at the [REDACTED] [REDACTED] residence. The child attends school, through open enrollment, at the [REDACTED]. The [REDACTED] is 30 minutes from the petitioner's residence.
5. The petitioner has a sister, [REDACTED] [REDACTED], who resides in [REDACTED], Wisconsin. The [REDACTED] residence is 15 minutes from the [REDACTED].
6. The petitioner works as a nursing assistant at [REDACTED], in [REDACTED]. The amount of time that she works is variable, with three days per week being typical. When the petitioner does work, she must arrive at the worksite by 6:00 a.m.

She therefore drives the child to her sister's residence before work on Monday morning; the child catches her school bus from the sister's residence. The school bus drops the child off at the sister's residence on Monday afternoon. The petitioner picks the child up from the sister's residence when she is done working on Mondays. If the petitioner works on Tuesday, the same procedure is followed. On Wednesday, the petitioner drops the child off with her sister before school, and the child is dropped off at the sister's residence and stays overnight there. On Thursday, the child catches the morning bus from the sister's residence, and is returned to the sister after school. The petitioner then picks up the child from her sister after school and has the child stay overnight at the [REDACTED] [REDACTED] residence. On Friday mornings, the child's father picks up the child from [REDACTED] [REDACTED] to facilitate her transport to school. The petitioner and the child's father alternate weekend placement of the child.

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 a “no eligibility” case, to base the overpayment determination on the actual MA/BCP charges paid (see 2nd paragraph below):

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 second paragraph in this policy direction arguably applied to October in this case, where the household was allegedly ineligible due to lack of a child having at least 40% placement time with the petitioner. See, *BCPEH*, § 2.2.1.

The agency did not allege that the petitioner lacks legal custody of the child. The dispute is over whether she has at least 40% placement time, which is a BCP eligibility requirement for an adult. The petitioner testified to the schedule in Finding #6. This testimony was corroborated by the testimony of the petitioner’s sister and ex-husband (father of the child). The investigator’s recollection of his conversation with the sister did not jibe with the sister’s testimony. The sister explained that when she told the investigator that the child spent overnight time with her “from Tuesday through Friday,” she meant that those nights were available on an “as needed” basis related to the petitioner’s work schedule.

Some time was wasted at hearing with a witness complaining about the investigator’s alleged failure to identify himself. I believe that the investigator appropriately identified himself, and that question is a red herring here.

Cases of this sort usually feature dueling accounts of placement time *between parents*. In this case, the parents agree on the whereabouts of the child, and support the petitioner’s eligibility for BCP. Given that the parents’ testimony is in agreement, the addition of the sister’s corroborative testimony is enough for me to conclude that the agency has not met its burden of proving that the petitioner lacked sufficient child placement time to be eligible for BCP in October 2013.

CONCLUSIONS OF LAW

1. The Department incorrectly determined that the petitioner was ineligible for BCP in October 2013 due to lack of having a child placed with her for at least 40% of the time.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the county agency with instructions to cease recovery efforts on the \$218.96 overpayment (claim # [REDACTED]) within 10 days of the date of this Decision.

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 [REDACTED], 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 3rd 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 3, 2014.

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