



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/153679

PRELIMINARY RECITALS

Pursuant to a petition filed November 21, 2013, under Wis. Stat., §49.45(5), to review a decision by the Calumet County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on January 23, 2014, by telephone.

The issue for determination is whether petitioner's household was overpaid MA because they failed to report an increase in income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lynn Brenner

Calumet County Dept. of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Calumet County.
2. Petitioner received BadgerCare Plus (BC+) MA in 2012 and 2013. A renewal was done in March, 2012, and BC+ was continued based upon the verified income from petitioner and her husband.

3. Petitioner's husband's income increased substantially in May, 2012 and household income remained at the higher level thereafter. Petitioner did not report an increase in income until the next renewal in April, 2013.
4. The agency later reviewed household income and found that it increased above BC+ limits in May, 2012. Had the increase been reported BC+ would have been affected beginning July, 2012.
5. By a notice dated October 13, 2013 the agency informed petitioner that the household was overpaid \$2,908.34 in MA from July, 2012 through April, 2013, claim no. [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.

Under BC+ rules the income limit for a caretaker parent who does not have access to private health insurance is 200% of the poverty level. BC+ Handbook, Appendix 16.1. That amount for a three-person household in 2012 was \$3,181.66. Handbook, App. 50.1. There is no limit for a child, but if household income is over 200% children are eligible for the BC+ Benchmark Plan with a premium. Handbook, App. 1.1.1. In May, 2012, petitioner's household income increased to \$3,937; income stayed above \$3,181 every month thereafter but changes were not made until after the April, 2013 renewal.

Based upon the evidence provided it is clear that the household was overpaid MA because the increased income would have made petitioner ineligible. The agency calculated the overpayment by taking MA payments made on petitioner's behalf and subtracting premiums paid for her during the period in question. I conclude that the overpayment was calculated correctly. Both petitioner and her husband are liable for the recovery.

CONCLUSIONS OF LAW

Petitioner was overpaid MA because she failed to report an increase in income that would have affected BC+ eligibility.

THEREFORE, it is

ORDERED

That 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 28th day of January, 2014

\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 28, 2014.

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