FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/153949

PRELIMINARY RECITALS

Pursuant to a petition filed December 04, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Columbia County Health & Human Services in regard to Medical Assistance, a hearing was held on January 08, 2014, at Portage, Wisconsin. At the request of the parties, the record was held open for closing arguments until February 19, 2014 for consecutive submissions by the parties. The county representative submitted its closing argument to DHA and petitioner on January 22, 2014, and petitioner submitted its response on February 5, 2014. No further submission was sent to DHA. Both submissions are received into the hearing record.

At the request of [redacted] and her husband, [redacted], the hearing for the two cases MOP/153946 and MOP/153949 were consolidated into the one hearing on January 8, 2014.

The issue for determination is whether the county agency is correctly seeking recovery of a BadgerCare (BC) overpayment of $1,457.00 to the petitioner during the period of November, 2012 through September 30, 2013, due to failure to timely and fully report (under-reporting) accurate household income at application which resulted in owing unpaid BC premiums of $1,457 which should have been paid by petitioner and his wife during the overpayment period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jessica McBride, ESS
Columbia County Health & Human Services
2652 Murphy Rd
PO Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Columbia County who resides with her husband, [redacted], and their four children.
2. The petitioner received FoodShare (FS) benefits for her household of six during the period of October, 2012 through September, 2013.
3. [redacted] is an employee of [redacted] Company, and received the following earned income: a) October, 2012 - $3,550.71; b) November, 2012 - $3,550.71; c) December, 2012 - $3,550.71; d) January, 2013 - $3,518.20; e) February, 2013 - $ 3,518.20; f) March, 2013 - $ 3,518.20; g) April, 2013 - $3,887.48; h) May, 2013 - $ 3,887.48; i) June, 2013 - $3,887.48; j) July, 2013 - $5,477.46; k) August, 2013 - $5,477.46; and l) September, 2013 - $5,477.46.
4. The petitioner failed to timely and fully report her husband's earned income to the county agency and instead under-reported his income as follows: a) October, 2012 - $2,484.00; b) November, 2012 - $2,484.00; c) December, 2012 - $2,484.00; d) January, 2013 - $2,484.00; e) February, 2013 - $2,484.00; f) March, 2013 - $3,140.58; g) April, 2013 - $3,140.58; h) May, 2013 - $3,140.58; i) June, 2013 - $3,140.58; j) July, 2013 - $3,140.58; k) August, 2013 - $3,140.58; and l) September, 2013 - $3,140.58.
5. [redacted] received an increase in his earned income during September, 2013 which was required to be reported to the county agency during October, 2012 for FS benefits. The increase in his earned income was also required to be reported to the agency starting November, 2012 for MA purposes.
6. If petitioner had fully reported her husband's earned income to the county agency, then that increased household income would have required that petitioner and his wife pay BadgerCare premiums for the entire period of November, 2012 through September 30, 2013.
7. The petitioner did not dispute her husband's earned income as stated in Finding of Fact #3 above.
8. The county agency sent an October 4, 2013 BadgerCare (BC) Overpayment Notice to petitioner's wife and petitioner which stated that petitioner received BC overpayments totaling $1,457.00 during the period of November, 2012 through September 30, 2013. The BC overpayment was due to petitioner's failure to timely and fully report her husband's earned income to the county agency at application which resulted in owing unpaid BC premiums of $1,457 which should have been paid by petitioner and his wife during the overpayment period.
9. The county agency's October 4, 2013 BC overpayment worksheets indicated how the $1,457.00 BC overpayment was accurately calculated.
10. In their February 4, 2013 closing statement, [redacted] and [redacted] basically stipulated that after receiving the answers to their questions from county agency personnel, they "now understand how the overpayment was figured, and agree to those numbers."

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (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 <u>to report the receipt of income</u> 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 <u>change</u> in the recipient's* financial** or *nonfinancial situation* or eligibility characteristics *that would have affected the recipient's eligibility for benefits* **<u>or the recipient's cost-sharing requirements.</u>**

(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.wi.gov/bcplus/ :

28.1 OVERPAYMENTS.

An "overpayment" occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. **<u>Concealing or not reporting income.</u>**
2. **Failure to report a change in income.**
3. Providing misinformation at the time of <u>application</u> regarding any information that would affect eligibility.

(Emphasis added).

28.2 RECOVERABLE OVERPAYMENTS.

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

1. <u>Applicant</u> /Member Error

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf <u>unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to.</u> Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

…

2. Fraud. ...
BCPEH, §28.1 – 28.2.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

During the January 8, 2014 hearing, the county agency representative, ESS Jessica McBride, presented a well-organized case, and established that the petitioner failed to timely report her husband's earned income during or report that increased household income as required by November, 2012. As a result, [redacted]'s earned income was not fully budgeted as income to the BC household in determining the petitioner's BC premiums during the period of November, 2012 through September, 2013. The county agency established that petitioner's household income was substantially above the income reported and budgeted by the county (due to petitioner's failure to fully report her husband's income) resulting in petitioner and his wife owing BC premium payments during the entire BC overpayment period. The petitioner did not contest that the household had received BC benefits during the period of November 1, 2012 through September 30, 2013. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's BC overpayment determination of $1,457.00 for that overpayment period.

During the hearing, petitioner explained that she primarily requested the hearing because she did not understand how the BC or FS overpayments had been calculated. However, in their February 4, 2013 closing statement, [redacted] and [redacted] [redacted] basically stipulated that after receiving the answers to their questions from county agency personnel, they "now understand how the overpayment was figured, and agree to those numbers." The petitioner was unable to refute the county agency's testimony and evidence regarding the BC overpayment case. Accordingly, based upon the above, I conclude that the county agency is correctly seeking recovery of a BadgerCare (BC) overpayment of $1,457.00 to the petitioner during the period of November, 2012 through September 30, 2013, due to failure to timely and fully report (under-reporting) accurate household income at application resulting in unpaid BC Plus premiums of $1,457 during the overpayment period.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a BadgerCare (BC) overpayment of $1,457.00 to the petitioner during the period of November, 2012 through September 30, 2013, due to failure to timely and fully report (under-reporting) accurate household income at application resulting in unpaid BC Plus premiums of $1,457 during the overpayment period.

THEREFORE, it is **ORDERED**

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of April, 2014

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\sGary M. Wolkstein
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 April 17, 2014.

Columbia County Health & Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability