



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/153995

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 Vilas County Department of Social Services in regard to Medical Assistance, a telephone hearing was held on February 05, 2014.

The issue for determination is whether the petitioner must repay an alleged overpayment of medical assistance.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED], by [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Beulah Garcia

Vilas County Department of Social Services
330 Court Street
Eagle River, WI 54521

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Vilas County.

2. The respondent seeks to recover \$23,559.67 in BadgerCare Plus benefits provided to the petitioner from June, 2012, through May, 2013, because it contends petitioner failed to report an increase in household income.
3. The petitioner lives with her husband and minor children.
4. The petitioner was an ongoing recipient of BadgerCare Plus and never reported earnings during the overpayment period; petitioner’s husband reported Social Security unearned income during the overpayment period, and reported that he was the president and owner of [REDACTED] [REDACTED] [REDACTED]
5. The petitioner’s and petitioner’s husband’s income from [REDACTED] [REDACTED] was verified by State Wage Records. Those records indicate petitioner’s and petitioner’s husband’s income from [REDACTED] [REDACTED] as follows:

Petitioner:

a.	2012, Quarter 2	\$6,883.84
b.	2012, Quarter 3	\$7,800.00
c.	2012, Quarter 4	\$4,200.00
d.	2013, Quarter 1	\$7,800.00
e.	2013, Quarter 2	\$7,800.00
f.	2013, Quarter 3	\$7,800.00

Petitioner’s Husband:

a.	2012, Quarter 4	\$3,400.00
b.	2013, Quarter 1	\$3,573.36
c.	2013, Quarter 2	\$3,573.36
d.	2013, Quarter 3	\$3,573.36

Exhibit 4.

6. Petitioner filed a timely appeal of the overpayment on December 4, 2013.

DISCUSSION

BadgerCare Plus provides medical assistance coverage to children under 19 and their parents or caretakers. Wis. Stat. § 49.471; *BadgerCare Plus Eligibility Handbook*, § 2.1. Unless they are pregnant, adults are ineligible if their household income exceeds 200% of the federal poverty limit. Wis. Stat. § 49.471(4)(a). Adults must pay a premium if their household income exceeds 150% of the federal poverty level; a premium must be paid on behalf of children if the household income exceeds 200% of the federal poverty level. Wis. Stat. § 49.271(1)(b). Recipients must report any change of income that affects their benefits to the agency by the 10th day of the month following the change. *BadgerCare Plus Eligibility Handbook*, § 27.3.

The petitioner lives with her husband and minor children. Petitioner’s husband provided an Employer Verification of Earnings (EVFE) form to the respondent on March 28, 2013. An employee of the respondent noted that petitioner signed the EVFE as president, and requested further verification. 2011 tax information was subsequently received, and when that income information was added to petitioner’s household budget, the calculated countable income exceeded program limits for the household’s adults, and required the maximum premium for the minor children.

The respondent noted at hearing that petitioner's husband reported on September 19, 2012 that he had not received any dividends from his business since the end of 2011. While that appears to be correct, unlike her husband, petitioner did receive income from the business during the last three quarters of 2012. The failure to report this income constitutes client error.

Medical assistance rules state that the Department may recover any overpayment that occurs because 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 [BadgerCare].
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.

Wis. Stat. § 49.497(1).

The county agency seeks to recover \$23,559.67 in BadgerCare Plus benefits provided to the petitioner's household. It based this overpayment on the petitioner's actual household income each month during this period, as is required by the *BadgerCare Plus Handbook*, § 28.4.2. The petitioner's actual quarterly income is found in Finding of Fact No. 5 and Exhibit 4; The petitioner does not challenge this information.

What she does challenge is the agency's authority to recover an overpayment under the circumstances found here. Petitioner's husband testified that he provided all of the information requested of him and points out that the overpayment would create a severe hardship on his family. I find no evidence that petitioner ever intentionally misled the agency or actively hid evidence of her income.

Regardless, the petitioner was aware of the requirement that income be reported, as is evidenced by petitioner's husband's regular contacts with the respondent regarding change reports, premium payments, and other telephone contacts. See, Exhibit 8. I understand that petitioner may have overlooked this requirement, but the rules concerning an overpayment only require that the respondent prove that she failed to report information that affected her benefits, not that she intentionally did so. Whenever her household income increased, she and her husband had a duty to report it to the respondent. Because they did not report these changes, they must repay the benefits they were not entitled to.

CONCLUSIONS OF LAW

The petitioner must repay \$23,559.67 in BadgerCare Plus benefits her household received because she did not report increases in her household income.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 2nd day of April, 2014

\sPeter McCombs
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 2, 2014.

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