



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/154112

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 11, 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 - WI Rapids in regard to Medical Assistance, a hearing was held on February 20, 2014, at Hayward, Wisconsin. A hearing scheduled for January 23, 2014, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner must repay an overpayment of BadgerCare Plus benefits that allegedly occurred because his children did not live with him 40% of the time.

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 Street, Room 651  
Madison, Wisconsin 53703

By: Beulah Garcia

Wood County Human Services - WI Rapids  
320 West Grand Avenue  
PO Box 8095  
Wisconsin Rapids, WI 54495-8095

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Sawyer County.

2. The county agency seeks to recover \$21,779.19 in medical assistance provided to the petitioner's household from October 1, 2012, through May 31, 2013.
3. The petitioner has two children from a previous marriage. Until September 2012, his children resided with him half of the time. Since September 2012, they have resided with him three weekends a month during the school year. When he has the children he picks them up at 6:30 p.m. on Friday and returns them to their mother at 6:30 p.m. on Sunday. The children are in school five days a week.
4. The petitioner's wife has lived with him since they were married in September 2012.
5. The petitioner had his annual renewal of his BadgerCare Plus benefits in September 2012. He did not report as part of his renewal that his children had begun living primarily with their mother. He did report at that time that his wife lived with him. He reported that his children were no longer living primarily with him during his next renewal, in September 2013.
6. The petitioner's wife has no children under 19 years old living with her.
7. The BadgerCare Plus program paid out \$19,640.48 for medical care and \$1,858.57 in capitation fees for a total of \$21,779.19 for the petitioner's household from October 1, 2012, through May 31, 2013. The household did not pay any premiums during this period. *Exhibit 1*.

### DISCUSSION

The department may recover any overpayment of medical assistance 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).

BadgerCare Plus provides medical assistance coverage to children under 19 and their parents or caretakers, including stepparents. A parent must reside with a child under 19 to be eligible. Wis. Stat. § 49.471; *BadgerCare Plus Eligibility Handbook*, § 2.1. The following policy guides eligibility in situations in which parents have joint custody:

When the natural or adoptive parents of a child do not live together, and have joint placement arrangements for the child (through a mutually agreed upon arrangement or court order), only one parent can be determined eligible at a time unless there is reasonably equivalent placement. Reasonably equivalent placement means that the child is residing with each parent at least 40% of the time during a month.

*BadgerCare Plus Eligibility Handbook*, § 2.2.1.2.

BadgerCare Plus overpayments are calculated for ineligible households by adding all medical expenses and capitation rate fees paid on behalf of the household and then subtracting any premiums the household has paid while incorrectly receiving benefits. *BadgerCare Plus Handbook*, § 28.4.2.

The petitioner had been receiving BadgerCare Plus since 2010. He was found eligible because he and his former wife had equal placement of their two young children. He was remarried in September 2012, the month he had his annual review of his BadgerCare Plus benefits, and his new wife was added to his case. She received BadgerCare Plus from September 2012 through September 2013 as the stepmother of the two children, who her husband reported continued to live with him. Their benefits ended when he reported at his annual review in September 2013 that his children were only living with him three weekends a month during the school year. When asked at his review how long that arrangement had been in place, he indicated that it had begun in September 2012. The agency contends that the petitioner and his wife should have been ineligible for benefits from October 1, 2012, the month after he should have reported the change of circumstances, until May 31, 2013, when the school year ended and he again had the children half of the time. He does not dispute that during this period the BadgerCare Plus program paid out \$21,779.19 for his household's medical care and capitation fees and that the household did not pay any premiums. The county agency seeks to recover this entire amount.

Regardless of how one looks at the evidence, the petitioner did not have his children 40% of the time during the period in question. He testified that he has the children during the school year from 6:30 p.m. on Friday and returns them to their mother at 6:30 p.m. on Sunday three weekends a month. Assuming there are four weeks in a month, this comes to 144 of the 976 hours in a four-week period, or slightly less than 15% of the time. (There are actually 4.3 weeks in the average month, which would reduce this percentage.) Even if one subtracts the approximately 40 hours a week the children are away from home and at school from the total hours in a week, the petitioner has them less than 18% of the time. Because he had the children less than 40% of the total time in a month, he and his wife were ineligible for BadgerCare Plus and thus were not entitled to any of \$21,779.19 in benefits the program paid on their household's behalf. Because this overpayment occurred as a result of his failure to report the change in custody, they must repay this amount.

In making this decision I am aware that the May 14, 2012, order signed by Judge Eugene Harrington stated: "Placement Schedule: This schedule constitutes a 50/50 placement for all matters and said schedule was arrived with this provision." Nevertheless, I am bound by policy that states that "[r]easonably equivalent placement means that the child is residing with each parent at least 40% of the time during a month." Although the judge's order refers to this as a 50/50 placement, the children are not residing with their father at least 40% of the time. It appears that the intent of the order may have been to allow the petitioner to continue to receive medical assistance and FoodShare. However, to carry this out, I would need equitable powers that would allow me to consider the fairness of the situation in light of the court order. As an administrative law judge, I (unlike a circuit court judge) do not have these powers. If the petitioner seeks this interpretation, he will have to appeal this decision to the circuit court.

### **CONCLUSIONS OF LAW**

The petitioner must repay a \$21,779.19 overpayment that occurred from October 1, 2012 through May 31, 2013, because he failed to report that his children did not live with him at least 40% of the time during the school year..

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 26th day of February, 2014

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\sMichael D. O'Brien  
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 February 26, 2014.

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