



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/154134

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 Washburn County Department of Social Services in regard to Medical Assistance, a hearing was held on January 23, 2014, at Shell Lake, Wisconsin.

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

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: Aaron Borreson

Washburn County Department of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The county agency seeks to recover \$813.18 in unpaid BadgerCare Plus premiums it contends were due on behalf of the petitioner's minor child from September 2012 through June 2013 because the petitioner allegedly failed to report an increase in her household income.
3. The petitioner renewed her BadgerCare Plus benefits in June 2012. On July 25, 2013, the county agency notified her that she must report to the agency if her household income exceeded \$2,943.04.
4. The petitioner's household income exceeded \$2,943.04 each month from July 2012 through June 2013. In September 2012 her household income was 286% of the federal poverty level, in October 2012 it was 299%, in January 2013, it was 281%, and in April 2013, it was 205%. In the remaining months from September 2012 through June 2013, her household income exceeded 300% of the federal poverty level.
5. BadgerCare Plus benefits closed for adults in the petitioner's household in July 2012 because she did not pay a premium.
6. The petitioner called the Northern Consortium and the county agency to end her child's BadgerCare Plus benefits.

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).

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's BadgerCare Plus benefits were due for renewal in July 2012. The benefits for adults closed because the petitioner did not pay a premium. *See* Wis. Admin. Code § DHS 103.085(1)(d)3. The benefits for her minor child remained open because her household income at the time of renewal was low enough that no premium was owed on that child's behalf. On July 25, 2012, the county agency notified the petitioner that she must report if her household monthly income exceeded \$2,943.04 because this would put the household income over 200% of the federal poverty level, the point at which premiums are charged for children. *BadgerCare Plus Handbook*, 48.1.1. That notice also indicated that her minor child was the only person in the household eligible for benefits. The petitioner's household income exceeded \$2,943.04 from July 2013 forward, meaning she was required to report the change in August and begin paying premiums in September. The agency contends that she owes \$813.18 in unpaid premiums for September 2012 through June 2013. She does not dispute this calculation, but argues she does not owe it because she attempted to end coverage of her child after insurance her employer provided covered that child.

The petitioner testified that after receiving the July 25, 2012, notice she tried several times to call the Northern Consortium to determine what she should do about canceling her child's coverage. No one ever

answered. She then called the county agency and spoke to an unknown person who transferred her to another line. No one answered that line. She left a message indicating that she wished to cancel coverage for her child and requested that the person return her call if she needed to do anything else. She said she never heard back from the agency worker and never received a card or anything else other than the July 25, 2012, letter concerning her child's benefits. The agency worker at the hearing, Aaron Borreson, testified that the agency records contain no notations indicating that the petitioner called at any time from July 24, 2012, through October 18, 2013.

Mr. Borreson has testified a number of times, and his credibility is unquestioned. But he has no first-hand knowledge of any alleged calls. Notations concerning the calls fall under the regularly kept records exception to the hearsay rule, but this does not mean that I must automatically accept the lack of notations as proof that the petitioner never called. This matter is determined according to the preponderance of the credible evidence. The petitioner sounded credible both because she did not appear to hide anything and because she provided sufficient details about her calls. Moreover, her contention that she called various agencies and either could not get through or did not have her call returned reflects allegations I have heard over the last couple years in almost every case where issues like the one here occur. This adds to the credibility of her statements. Because she credibility asserted that she attempted to report a change of circumstances that would have ended her child's benefits and thus averted the premiums and overpayment, I find that she is not responsible for repaying that overpayment.

CONCLUSIONS OF LAW

The Department cannot recover a \$813.18 overpayment of medical assistance benefits that allegedly occurred from September 2012 through June 2013 because the petitioner reported to the agency that she wished to end her child's BadgerCare Plus benefits.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to remove the finding from the petitioner's record that she was overpaid \$813.18 in medical assistance from September 2012 through June 2013 and that it end all attempts to recover the alleged overpayment.

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 13th day of February, 2014

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on February 13, 2014.

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