



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/154425

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 23, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on January 28, 2014, at Green Bay, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner shares responsibility for payment of a \$38,863.50 BCP overpayment, incurred from October 2009 through August 2013.

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: Diane Van Asten, fraud investigator  
Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. The petitioner received BCP for a household that included herself, her husband [REDACTED], and their children from at least October 2009 through August 2013.
3. On December 12, 2013, the county agency issued two *Medicaid Overpayment Notice* documents to the petitioner, advising that she had been overpaid BCP benefits of \$35,300.80 from October 1, 2009 through November 30, 2012, and \$3,562.70 from March 1, 2013 through August 31, 2013. The overpayment was due to client error/fraud.
4. The petitioner's BCP household included her husband throughout the overpayment period, as the husband was residing in the household throughout the period. There is no dispute that the husband received income ranging from \$5,295 to \$10,932 during every overpayment month in the overpayment period date range.

This income caused the household's *adults* to be ineligible for BCP from October 2009 through April 2011, from September 2011 through August 2012, and from November 2012 through August 2013. The adults were eligible but should have paid premiums for May and June 2011, and August 2013. The adults did not receive BCP for September and October 2012, so they were not overpaid for those two months.

Adults are subject to a lower income limit for BCP eligibility than are children. Due to the income, the household should have been assessed BCP premiums for the eligible *children* from October 2009 through April 2011, and July 2011 through June 2013.

5. The petitioner asserts that she was unaware of her husband's additional income. He has been criminally charged in connection with acquiring this income; the petitioner has not been charged. *See*, CCAP for Brown County Case No. 2013 CF 001493, featuring 10 counts of theft through false representation. The family was evicted from their residence in December 2012 by Venture Property Management. *See*, Brown County Case No. 2012 SC 006594.

### DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect 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 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.

(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.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a “no eligibility” case, to base the overpayment determination on the actual MA/BCP charges paid:

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

### **28.2 RECOVERABLE OVERPAYMENTS.**

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

#### **1. Applicant /Member Error**

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member’s behalf 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. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

Applicant/Member error occurs when there is a:

- a. Misstatement or omission of facts by a member, or any other person responsible for giving information on the member’s behalf at a BC + application or review.
- or**
- b. Failure on the part of the member, or any person responsible for giving information on the member’s behalf, to report required changes in financial ([27.3](#)) (income, expenses, etc.) or non-financial ([27.2](#)) information that affects eligibility, premium, patient liability or cost share amounts.

An overpayment occurs if the change would have adversely affected eligibility, the benefit plan or the premium amount.

#### **2. Fraud. ...**

*BCPEH*, §28.1 – 28.2.

The BCP statute requires the recipient to report changes that might affect eligibility within 10 days of the occurrence. Wis. Stats. §49.471(6)(h). See in accord, *BCPEH*, §27.3. Thus, the existence of the timely reporting requirement is clear.

In this case, the agency asserts that the petitioner failed to report the increase in her household income to above the 200% of the federal poverty level (FPL) for the overpayment months. When household income exceeded 200% FPL, the adults were not eligible for benefits, and premiums should have been paid for the children. Wis. Stat. §49.471(4)(a). Based on the undisputed excess income, the agency came up with the overpayment amount. The petitioner does not challenge the agency's arithmetic and agrees that she did not report income above 200% FPL, but does assert that the overpayment was not intentional *on her part*. She asserts that her husband misled her as to the amount of their household income, which caused her to under-report. However, the statute says there is an overpayment for a simple failure to supply correct facts, and does not require that the petitioner had to *intentionally* fail to supply correct facts. There is no question that the petitioner, most likely unintentionally, failed to supply correct facts to the agency.

Having established that the petitioner was overpaid, the final question is whether she shares in liability for repayment where, as she alleges here, she did not know that an overpayment was being created. The answer is yes, as an adult member of the household, she shares in the overpayment liability. The statute says "*the department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made.*" That would include the petitioner.

### **CONCLUSIONS OF LAW**

1. The petitioner failed to timely report her increased income in August 2009, resulting in the creation of a BCP overpayment.
2. The county agency correctly determined that the petitioner was overpaid \$38,863.50 in BCP fees during the October 2009 through August 2013, period.
3. No BCP overpayment occurred in September and October, 2012.

**THEREFORE, it is**

**ORDERED**

That the petition 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 18th day of March, 2014

---

\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 18, 2014.

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