



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 07, 2014, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on January 28, 2014, at Kenosha, Wisconsin.

The issue for determination is whether any overissued MA is subject to recovery.

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: Kelly Kosloske

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner was covered by MA from November 2012-April 2013 for a household of two.
3. In September 2012, petitioner's gross household income of \$4274 (with earnings of \$1113+child support of \$800) went above the 133% federal poverty level (FPL). \$1,676.92 (2012) and \$1719.03 (2013) was 133% of the FPL at that time.

4. On December 3, 2013 the agency issued a notice of decision to petitioner advising her that the agency found an MA overpayment in the amount of \$1287.22 for the MA issued due to the capitation rates that had been paid for her between November 2012-April 2013.

### DISCUSSION

DHS is legally required to seek recovery of incorrect MA payments when a recipient engages in a misstatement or omission of fact to the MA program, which in turn gives rise to an MA 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 BadgerCare 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 for the recipient's cost-sharing requirements.

(b) The department's right of recovery is against any Medical Assistance or Badger Care 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 ...

Wis. Stat. §49.497(1). See also, *BadgerCare + Eligibility Handbook*, §28.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (version #12-02 as this was the version in effect at the time). The agency contends that the petitioner's household received more in BadgerCare Plus benefits than it was entitled to because it failed to report an increase in income to the agency.

BadgerCare Plus provides MA 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). In 2012, 200% of the FPL was \$2521.66, which made petitioner ineligible for BadgerCare when she exceeded that amount. Recipients must report any change of income that affects their benefits to the agency by the 10<sup>th</sup> day of the month following the change, which includes reporting income changes when their total monthly gross income exceeds 133% of the FPL. *BadgerCare + Eligibility Handbook*, §27.3.

The petitioner was given an opportunity to challenge any of the calculations present in the overpayment. She did not provide any information to show the calculations were wrong. I add for her benefit that the child support income is multiplied by 2 for MA cases to get the monthly amount. This is a system-wide policy that the agency uses for every MA case. Thus, I find no error in the determination of that income. Her main argument was that she thought she had reported all of the necessary changes to the agency nor had used her MA during all of the time period in question. She had no collateral evidence to support that, and the agency had no evidence that it ever occurred either. I add that the rules do not require that the omission be intentional but rather only that it has occurred. Finally, I add that even if petitioner had not gone to the doctor/made a claim for MA during a portion of the overpayment period, MA makes monthly payments for recipients called a "capitation rate". The agency is required to recover that rate for an overpayment as we have here. *BadgerCare + Handbook*, §28.4.2. Based upon the preponderance of the evidence, I uphold the agency's overpayment determination.

[REDACTED]

**CONCLUSIONS OF LAW**

The petitioner was overpaid \$1287.22 for the MA issued between November 2012-April 2013.

**THEREFORE, it is** **ORDERED**

That the petition for review herein be 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 Milwaukee,  
Wisconsin, this 17th day of March, 2014

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\sKelly Cochrane  
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 March 17, 2014.

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