



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/154865

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services – Wis. Rapids in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on February 26, 2014, by telephone.

The issue for determination is whether the petitioner was overpaid MA/BCP benefits for the May through November 2013 period.

There appeared at that time 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, Resolution Coordr.
Northern IM Consortium

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sawyer County.
2. BCP is a variant of Medical Assistance in Wisconsin for low-income families with children. The petitioner had an ongoing BCP case from at least February through November, 2013. She began employment with [REDACTED] [REDACTED] in 2013, and did not report that employment or income. The petitioner's earnings from Sawyer County Ambulance also increased above the previously reported level of \$87.50 monthly. The petitioner began earning income exceeding 200% FPL in

February, 2013. The agency learned of the income through a state wage database received in November 2013.

3. The petitioner was not eligible for BCP from May through September 2013 and for November, 2013. On December 11, 2013, the county agency issued a *Medicaid Overpayment Notice* to the petitioner, stating that she had been overpaid \$9,871.26 for the January 1, 2013 through November 30, 2013, period. *See*, Exhibit 3. This was subsequently corrected to a \$6,273.20 overpayment for the period of May 2013 through November 2013. *See*, Exhibit 5. The BCP program paid a monthly HMO capitation fee and other charges on her behalf during these months.

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.

In this case, the agency asserts that the petitioner failed to report the commencement of employment and, subsequently, the increase in her income to above the 200% of the federal poverty level (FPL) for the overpayment months. When her income exceeded 200% FPL, she was not eligible for benefits. Wis. Stat. §49.471(4)(a). Based on her undisputed excess income, the agency came up with the overpayment amount. The petitioner does not challenge the agency's arithmetic, but does assert that the overpayment was not intentional. She asserts that she did not understand that she had exceeded the reporting threshold. She does not claim that she timely reported the [REDACTED] job or the increase in her Sawyer County income.

The BCP statute requires the recipient to report changes that might affect eligibility:

(6) MISCELLANEOUS ELIGIBILITY AND BENEFIT PROVISIONS. ...

(h) Within 10 days after the change occurs, a recipient shall report to the department any change that might affect his or her eligibility or any change that might require

premium payment by a recipient who was not required to pay premiums before the change.

Wis. Stats. §49.471(6)(h). See in accord, *BCPEH*, §27.2. Thus, the existence of the timely reporting requirement is clear. When a recipient's income exceeds 200% FPL, she is no longer financially eligible for BCP. There is no dispute that the petitioner failed to report her increased and new income in 2013, and that the increase made her ineligible for months identified in the overpayment calculation. Thus, the overpayment may be collected here.

CONCLUSIONS OF LAW

1. The petitioner failed to timely report her new and increased income in February or March, 2013, resulting in the creation of a BCP overpayment.
2. The county agency correctly determined that the petitioner was overpaid \$6,273.20 in BCP fees during the May through November, 2013, period.

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 28th day of February, 2014

\sNancy J. Gagnon
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 28, 2014.

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