

FINDINGS OF FACT

1. At all times material hereto, petitioner (CARES # [REDACTED]) was a resident of Brown County.
2. Petitioner and petitioner's family received MA during various time periods between October, 2009 and August, 2013.
3. On December 12, 2013, *Medicaid Overpayment Notices* and worksheets were sent to the petitioner, advising that he had been overpaid a total of \$39,448.68 as follows:

| | | |
|---------------------------|------------------|-----------|
| BCPA Claim No. [REDACTED] | 10/1/09-09/30/10 | 10,375.71 |
| BCPC Claim No. [REDACTED] | 10/1/09-09/30/10 | 3,148.25 |
| BCPA Claim No. [REDACTED] | 10/1/10-09/30/11 | 7,007.30 |
| BCPC Claim No. [REDACTED] | 10/1/09-04/30/11 | 1,492.65 |
| BCPC Claim No. [REDACTED] | 07/1/11-08/31/11 | 100.00 |
| BCPE Claim No. [REDACTED] | 09/1/11-08/31/12 | 11,669.68 |
| BCPM Claim No. [REDACTED] | 07/1/12-08/31/12 | 1,019.56 |
| BCPC Claim No. [REDACTED] | 11/1/12-11/30/12 | 487.65 |
| BCPC Claim No. [REDACTED] | 09/1/13-11/30/13 | 585.18 |
| BCPA Claim No. [REDACTED] | 03/1/13-08/31/13 | 2,317.40 |
| BCPC Claim No. [REDACTED] | 03/1/13-08/31/13 | 1,245.30 |

See, Exhibit 6.

4. The respondent subsequently found an error in the income calculations pertaining to a portion of BCPC Claim No. [REDACTED]. The initially asserted overpayment figure was \$585.18, but the respondent determined corrected the overpayment to \$225.06. See, Exhibit 7. As such, the total MA overpayment is \$39,088.58.
5. The petitioner's FS household income during the periods of October, 2009 – July, 2011, and March, 2013 – August, 2013 included income affecting program limits and coverages/premiums during every overpayment month in the overpayment period date range (see Finding of Fact #3, above). This caused the household to be ineligible for FS in such months. See, Exhibit 5.
6. The petitioner had customers invest in his business, National Business Management Consultants (NBMC). Certain funds invested in MBMC were subsequently withdrawn by petitioner and Bags, LLC, d/b/a NBMC, where petitioner was the only member and signatory. See, Exhibit 5.
7. On February 27, 2014, the petitioner entered a plea of no-contest and was criminally convicted of seven (7) counts of Theft by False Representation. Three other charges (two felonies, one misdemeanor) were dismissed, but read in. See, CCAP for Brown Co. Case No. [REDACTED]

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(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.

See also the department's BC+ Handbook, § 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Under BC+ rules in effect during the overpayment time periods at issue here, the income limit for caretaker parents was 200% of the poverty level. BC+ Handbook, § 16.1. There was no limit for a child, but if household income was over 200% children were eligible for the BC+ Benchmark Plan with a premium. BC+ Handbook, § 1.1.1. In addition, caretaker parents who are self-employed also could be eligible for the Benchmark Plan if income is over 200% of poverty. Id.

Using the best evidence available, the respondent determined that the petitioner's household was overpaid a total of \$39,088.58 in MA benefits during the overpayment time periods identified at Finding of Fact #3, above. The respondent found that petitioner had income adversely affecting eligibility or premium amounts in each month of the overpayment periods, and that he had failed to disclose this income to the county agency. In support of its findings, the respondent provided documentation identifying the criminal allegations against the petitioner, to which the respondent subsequently pleaded no-contest.

An investigation by the Brown County Sheriff's Department noted that:

...it appears that [petitioner] allegedly fraudulently obtained financial loans in the victims' names or enticed victims to invest in a business, National Business Management Consultants (NBMC), that appears to have been created by [petitioner]. The money invested in in NBMC was withdrawn and controlled by [REDACTED] and Bags, LLC doing business as NBMC, where [petitioner] was the only member and signature. ...

Exhibit 5.

On February 27, 2014, the petitioner entered a plea of no-contest and was criminally convicted of seven (7) counts of Theft by False Representation. Three other charges (two felonies, one misdemeanor) were

dismissed, but read in. See, CCAP for Brown Co. Case No. [REDACTED]. The petitioner is serving a sentence of 19 years in state prison. Petitioner has indicated that he plans to appeal his convictions.

The petitioner argued strenuously at hearing and in pre- and post-hearing submissions, that the monies at issue in his criminal matter did not constitute income, as the funds were not received by him as income, but as investments. He also asserts that the funds should be considered assets. In support of his contention, he also notes that he has been ordered to pay restitution to his victims; therefore those monies cannot be considered earned or unearned income. I disagree.

MA policy requires that self-employment earnings be included in petitioner's counted earned income. Medicaid Eligibility Handbook § 15.6. It was undisputed that petitioner never identified his relationship with NBMC or Bags, LLC to the respondent. He contends that this was immaterial, since he received no income; I cannot find that the petitioner has established any basis for this contention. As the Brown County Sheriff's Department noted, money invested in NBMC was withdrawn and controlled by the petitioner. See, Exhibit 5. The respondent does not deny having received money as the owner or member of NBMC or Bags, LLC, and I find his testimony and argument that the funds were not available to him as income to be convenient, misleading, self-serving, and simply not credible. The respondent does not identify where the funds were spent; it is undisputed that funds were received by the petitioner, and that those funds are not available for immediate restitution. The record establishes that those funds were used by the petitioner and available to the petitioner.

The respondent established a prima facie case that the petitioner received an overpayment of MA benefits due to the petitioner's failure to identify accurate household income. The respondent has failed to successfully rebut the petitioner's evidence.

CONCLUSIONS OF LAW

The county correctly determined that the petitioner's household was overpaid a total of \$39,088.58 in MA benefits (see, Finding of Fact #4, above) during the overpayment time periods identified at Finding of Fact #3, above, based upon petitioner's failure to identify accurate household income during said periods of time.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of August, 2014.

\sPeter McCombs
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 August 19, 2014.

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