



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/155284

PRELIMINARY RECITALS

Pursuant to a petition filed February 06, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance, a telephonic hearing was held on March 13, 2014, at Milwaukee, Wisconsin. At the request of the parties, the record was held open until March 24, 2014 for petitioner’s submission of income verification (paystubs) to OIG for review and then for petitioner’s written closing argument. Upon review of petitioner’s submission, OIG would then by April 10, 2014 submit its closing argument to DHA with a final opportunity for a Reply statement by petitioner to DHA by April 17, 2014. The petitioner failed to submit her income verification to OIG, and provided no explanation as to why it failed to do so. OIG timely submitted its closing argument to DHA (and to the petitioner) which is received into the hearing record.

The issue for determination is whether Milwaukee Enrollment Services (MES) correctly determined that petitioner was overpaid a total of \$2,997.01 in BadgerCare (BC) benefits during the period of June 1, 2012 to September 30, 2013, due to petitioner’s under-reporting of her income to MES which resulted in household income above the BC income eligibility limit during some of the overpayment period and unpaid BC premiums and incorrectly paid capitation fees.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Desarae Robinson, fraud investigator
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:
 Gary M. Wolkstein
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received BadgerCare (BC) Plus benefits for herself and her six children in Milwaukee County during the time period of June 1, 2012 through September 30, 2013.
2. The petitioner's household's income was above the income reporting requirement in April, 2013 which required petitioner to report the increase in her income by the tenth of May, 2012 (which affected her June, 2012 BC eligibility, capitation fees, and BC premiums).
3. During her BadgerCare (BC) review applications of 2012 and 2013, the respondent failed to timely report that her employment income at the Milwaukee County Mental Health Complex increased over 130% of the federal poverty level, but instead petitioner continued to submit an employer statement that reflected pay rate and minimum hours based on her initial hiring status. Her actual income and hours worked were consistently higher than what was reflected on the submitted employer statement, as confirmed by Equifax verification of respondent's wages during the period of June 1, 2012 through September, 2013.
4. The petitioner failed to timely report her full income received during her reviews during the period of September 1, 2012 to September 30, 2013.
5. The petitioner's earned income was above the BC 200% FPL income eligibility limits during November, 2012, and August and September, 2013 resulting in petitioner owing capitation fees for those months. Those capitation fees were paid even if petitioner had private health insurance.
6. The petitioner's earned income was higher than she reported resulting in unpaid premiums during the months of June and July, 2012, February and March, 2013, June and July, 2013, and September, 2013.
7. The Department sent a February 19, 2014 BadgerCare Plus Overpayment Notice to the petitioner stating that she received an overpayment of BadgerCare benefits in the amount of \$2,997.01 during the period of June 1, 2012 to September 30, 2013, due to failure to fully report her income resulting in unpaid premiums and capitation fees paid when petitioner was income ineligible for BC benefits.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (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.wi.gov/bcplus/> :

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.

(Emphasis added).

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.

...

2. Fraud. ...

BCPEH, §28.1 – 28.2.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then

rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, during the hearing and while the record was held open, the county agency presented a well-organized and documented case to establish that it was correctly pursuing an MA overpayment against the petitioner. The county agency discovered through Equifax that petitioner failed to fully report her employment at the Milwaukee County Mental Health Complex, but instead petitioner continued to submit an employer statement that reflected pay rate and minimum hours based on her initial hiring status. The agency investigated the matter further, and confirmed that petitioner failed to report her monthly earned income, and that the household income was above the income eligibility limit for November, 2012, and August and September, 2013. See Finding of Fact #5 above. The petitioner also owed capitation fees for those months in which her household income was above the income limits even if she had private insurance. See Finding of Fact #5 above. The petitioner also owed unpaid premiums during the months of June and July, 2012, February and March, 2013, June and July, 2013, and September, 2013. See Finding of Fact #6 above. As a result, the county agency correctly determined that the petitioner was overpaid \$2,997.01 for her failure to fully and accurately report her total household income during June, 2012 through September, 2013.

During the March 13, 2014 hearing, petitioner was unable to refute the county's case, or undermine any of its substantial documentation that it was correctly seeking an MA overpayment against the petitioner during the period of June, 2012 to September 30, 2013. In fact, while the record was held open, the petitioner failed to submit her income verification to OIG, and provided no explanation as to why it failed to do so. See Preliminary Recitals above. Further, the county representative explained that petitioner was notified of her responsibility to accurately and timely report all of her household's income information and any **changes** (including new employment) to household income, as she did sign a "Notice of Responsibility." Petitioner was also unable to establish any error in the county's calculation of her BC overpayment, or that she had made any payments towards that overpayment.

The BadgerCare Plus Handbook provides that BC members must report their income changes when their total monthly gross income exceeds the percentages of the Federal Poverty Limit (FP for their group size by the 10th of the month following the month in which total income exceeds the previous threshold. BadgerCare Plus Handbook, section 27.3, "Income Change Report." As a Milwaukee county agency worker, petitioner should have been fully aware of income reporting requirements.

Based upon the answers during the hearing and in the detailed itemization of her overpayment provided by the county (including detailed BC payments, BC premiums, and capitation fees for petitioner), the petitioner was provided a full explanation of her BadgerCare overpayment. The petitioner was unable to establish with any specificity any error on the part of the county agency in concluding that her household income was above the income limit during some of the overpayment period or that she had improperly received MA payments on behalf of herself due to her household's income ineligibility or unpaid BC premiums or incorrectly paid capitation fees. During the hearing, petitioner's testimony was simply not credible that she timely reported to the county agency her full, actual income. Accordingly, based upon the above hearing record, I conclude that Milwaukee Enrollment Services (MES) correctly determined that petitioner was overpaid a total of \$2,997.01 in BadgerCare (BC) benefits during the period of June 1, 2012 to September 30, 2013, due to petitioner's under-reporting of her income to MES which resulted in household income above the BC income eligibility limit during some of the overpayment period and unpaid BC premiums and incorrectly paid capitation fees.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services (MES) correctly determined that petitioner was overpaid a total of \$2,997.01 in BadgerCare (BC) benefits during the period of June 1, 2012 to September 30, 2013, due to petitioner's under-reporting of her income to MES which resulted in household income above the BC income eligibility limit during some of the overpayment period and unpaid BC premiums and incorrectly paid capitation fees.

THEREFORE, it is

ORDERED

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 22nd day of July, 2014

\sGary M. Wolkstein
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 22, 2014.

Public Assistance Collection Unit
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Division of Health Care Access and Accountability