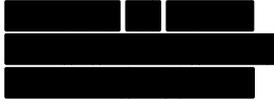




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/155343

PRELIMINARY RECITALS

Pursuant to a petition filed February 08, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance – BadgerCare Plus, a hearing was held on May 05, 2014, at Appleton, Wisconsin. At the request of petitioner, a hearing set for March 31, 2014, was rescheduled. At the request of the parties, the record was held open for a period of 10 days for the discretionary submission of additional documents by the parties. The petitioner timely submitted a written closing summation (with a copy sent to the respondent), which was received into the hearing record. The respondent did not submit any documentation post-hearing.

The issue for determination is whether the county agency correctly determined that petitioner was overpaid BadgerCare Plus benefits during the period of May 1, 2010, through December 31, 2013, due to petitioner’s failure to timely report accurate household composition and her boyfriend’s earned income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

Department of Health Services
1 West Wilson [redacted], Room 651
Madison, Wisconsin 53703

By: Debbie DeBruin

Outagamie County Department of Human Services
401 S. Elm [redacted]
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner and her boyfriend, JC, have two children in common
3. Petitioner resided with her children and JC prior to May, 2010. On April 5, 2010, petitioner reported to the respondent that JC was no longer residing with petitioner.
4. Petitioner resided at her mother’s home from April, 2010, through February, 2012.
5. Petitioner and her children have resided with JC from March, 2012 to the present.
6. Pursuant to written notice dated January 3, 2014, the respondent notified petitioner that it had established overpayment claims for which petitioner was liable, as follows:

[REDACTED]	05/01/10 – 12/31/10	\$705.18
[REDACTED]	05/01/10 – 12/31/10	3054.53
[REDACTED]	01/01/11 – 12/31/11	3706.56
[REDACTED]	01/01/11 – 12/31/11	1859.06
[REDACTED]	01/01/12 – 12/31/12	4112.78
[REDACTED]	01/01/12 – 12/31/12	1400.00
[REDACTED]	01/01/13 – 12/31/13	1376.00
[REDACTED]	01/01/13 – 12/31/13	3493.62

See, Exhibit 8.

**DISCUSSION**

The department may recover any overpayment of medical assistance that occurs because 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 [BadgerCare].
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.

Wis. Stat. § 49.497(1).

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. *BadgerCare Plus Eligibility Handbook*, § 27.3.

The county agency seeks to recover BadgerCare Plus benefits provided to the petitioner from May, 2012, through December, 2013, because it alleges that she resided with her boyfriend during this time period, and she failed to report her boyfriend’s income to the agency. In support of its allegations that petitioner and JC were residing together during this period, the respondent presented testimony and documentary evidence showing that petitioner and JC had the same address of record during this period per Department, Child Support, and vehicle registration records, they have jointly owned, during the overpayment period and through the present, the property where they both presently reside, and JC’s

paystubs show his address at the [REDACTED] [REDACTED] property. The respondent's representative testified that the entirety of the asserted overpayment was based upon its determination that petitioner and JC resided together during the overpayment period.

The petitioner presented credible testimony that she has never been married to JC, who is the father of her two children. Relationship issues in early 2010 led to JC moving out of the residence; ultimately, JC returned to the residence and petitioner moved in with her mother. Petitioner testified that she lived with her mother from October, 2010, through late February/early March of 2012. This testimony was corroborated by petitioner's mother and her brother, both of whom resided with petitioner during this time period. The couple continued to work on their relationship, and reconciled in February/March of 2012.

I conclude that the petitioner has successfully rebutted the respondent's determination that petitioner and JC resided together during the entirety of the overpayment period. I found the testimony proffered by the petitioner to be credible and strongly corroborated by the sworn testimony of her mother, brother, and JC. The respondent has failed to establish an overpayment of BadgerCare benefits to petitioner during the period of May 1, 2010, through February 29, 2012.

The petitioner raised a second issue, arguing that JC's income should never have been included regarding BadgerCare benefits for petitioner, as they were not married and JS has no financial responsibility for petitioner. I find this incorrect. The *BadgerCare Plus Eligibility Handbook* specifically identified household composition involving co-habiting co-parents:

...

**The BC+ Test Group for a primary person who is residing with his or her own child or with a spouse and the spouse's child will include the following individuals:**

1. The primary person and the primary person's spouse.
2. A child under age 19 of the primary person or the primary person's spouse.
3. **A co-parent of a primary person's child** or the co-parent of the spouse's child.

*BadgerCare Plus Eligibility Handbook (2012)* §2.2.1(emphasis added), for comparison, see, *BadgerCare Eligibility Handbook (2014)* §2.3. While residing jointly, respondent properly included petitioner and JC both as members of the BadgerCare Plus test group for their household. Petitioner conceded that she failed to inform the respondent when she resumed residing with JC. Therefore, petitioner is liable for the BadgerCare overpayment identified during the period of March, 2012, through December, 2013,

### CONCLUSIONS OF LAW

1. The respondent has failed to establish an overpayment of BadgerCare benefits to petitioner during the period of May 1, 2010, through February 29, 2012.
2. As co-parents residing together, petitioner and JC are both members of the BadgerCare Plus test group for their household.

**THEREFORE, it is**

**ORDERED**

That this matter shall be remanded to the respondent to review and re-determine the petitioner's liability for any BadgerCare overpayment during the time period of March, 2012, through December, 2013. If overpayment(s) are again identified, new notices of overpayment and overpayment worksheets identifying the overpayment calculations shall be provided to petitioner. All overpayment claims

pertaining to the time period of May 1, 2010, through February 29, 2012, shall be rescinded. All actions required by this Order shall be completed within 10 days following issuance of this Decision.

### **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 12th day of June, 2014.

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\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 June 12, 2014.

Outagamie County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
Attorney Chris Trebatoski