



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/155346

PRELIMINARY RECITALS

Pursuant to a petition filed February 5, 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 - WI Rapids in regard to Medical Assistance, a hearing was held on March 18, 2014, at Washburn, Wisconsin.

The issue for determination is whether the petitioner failed to report a change of income and therefore must repay an overpayment of medical assistance.

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: Beulah Garcia

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Bayfield County.
2. The county agency notified the petitioner on February 4, 2014, that she must repay \$5,945.21 of the BadgerCare Plus benefits her household received from June 1, 2012, through November 30,

2013, because she failed to report a change of income. It has since reduced the amount it seeks to recover to \$3,002.84 and limited the overpayment period to February 2013 through November 2013.

3. The county agency notified the petitioner on May 9, 2011, that her household was eligible for BadgerCare Plus and that she must notify the agency if her “household’s total monthly income (before taxes) goes over \$3,725.00.” That notice did not indicate that when determining her income for medical assistance reporting purposes she had to add depreciation back in.
4. The county agency notified the petitioner on November 12, 2012, that her household was eligible for BadgerCare Plus and that she must notify the agency if her household’s total gross monthly income exceeded \$1,260.83. That notice did not indicate that when determining her income for medical assistance reporting purposes she had to add depreciation back in.
5. The petitioner’s reported depreciation on her household’s self-employment income was \$1,150.83 from April through December 2012, \$159.25 from January through May 2013, and \$80.40 from June through November 2013.
6. The petitioner earned \$1,933.75 in wages in December 2012. She earned between \$1,711.50 and \$2,474.75 a month from January through June 2013.
7. The petitioner’s household had the following gross monthly household after adding depreciation back in:

a. December 2012:	\$1,970.09
b. January 2013:	\$3,562.17
c. February 2013:	\$3,523.67
d. March 2013:	\$3,371.42
e. April 2013:	\$3,087.92
f. May 2013:	\$3,660.17
g. June 2013:	\$6,271.16
h. July 2013:	\$5,919.66
i. August 2013:	\$5,919.66
j. September 2013:	\$5,919.66
k. October 2013:	\$6,919.66
l. November 2013:	\$6,919.66

DISCUSSION

The county agency seeks to recover \$3,002.84 from the petitioner for an alleged overpayment of BadgerCare Plus benefits provided to her and her children from February through November 2013 because it contends that she failed to report income that affected their benefits. BadgerCare Plus provides medical assistance to children under 19 and their parents. Wis. Admin. Code, § 49.471.

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).

Eligibility and premiums depended upon total household income. *See* Wis. Stat. § 49.471(1)(f). During the period of the alleged overpayment, adults generally could not receive benefits if their household's income exceeded 200% of the federal poverty level. This limit generally did not apply to children. Wis. Stat. § 49.471(4)(a). Adults in households with income that exceeded 133% of the federal poverty level had to pay a premium. Premiums were not assessed for children until their income exceeded 200% of the federal poverty level. Wis. Stat. § 49.471(10)(b); *BadgerCare Plus Handbook*, 19.1.

The agency notified the petitioner on May 9, 2011, that her household was eligible for BadgerCare Plus and that she must notify the agency if her "household's total monthly income (before taxes) goes over \$3,725.00." On November 12, 2012, it notified her that she must report if her household income exceeded \$1,260.83. The county agency initially sought to recover \$5,945.21 in benefits paid from June 1, 2012, through November 30, 2013, because she did not report her income when it crossed this threshold. It later reduced the period from February through November 2013 and the amount to \$3,002.84. When determining her reporting requirement and subsequent overpayment the agency added depreciation claimed as a business expense back into her income.

During the period in question, Wisconsin law required that depreciation be added back into income when determining BadgerCare Plus benefits. Wis. Stat. § 49.471(7)(a)1. The problem is that the notices sent to the petitioner informing her of her reporting requirements never mentioned that she must consider depreciation. This is not the type of requirement that even a well-informed lay person would likely be aware of, and a reasonable person would assume that the reporting threshold referred to income as defined by the Internal Revenue Service. Because the agency never told her to base her income on what she earned after adding depreciation back in, I find that she did not fail to report a change of income as long as her income as it would be determined by the IRS did not exceed the threshold.

If the agency had continued to assert that the overpayment began in June 2012, depreciation would have affected what the petitioner was supposed to report. But by December 2012, even without considering self-employment income, her wages alone were \$1,933.75, which exceeded her household's \$1,260.83 reporting requirement. I am aware that this reporting requirement was buried in a notice that automatically extended her benefits without requiring her to take any action. Nevertheless, it was a change the law required her to report. The agency correctly determined that she would have to report this by the 10th day of January, the next month after the change of circumstances, and that it would have affected benefits beginning in February 2013. The agency based the overpayment on the additional premiums the petitioner should have paid from February through May 2012 and the per capita payments and payments for medical care made on her household's behalf from June through November 2013. I find no errors in these calculations, and therefore uphold them.

I note that although I understand why the petitioner finds the reporting requirements confusing and failed to follow them, her 2012 tax return indicates that she and her husband claimed less than \$1,000 for the entire year for depreciation. In addition, her household's income, even without adding depreciation back in, exceeded \$5,500 a month from June 2013 forward. She should have known by then that her income exceeded her reporting requirement regardless of the amount of her depreciation.

CONCLUSIONS OF LAW

1. The petitioner must repay an overpayment of medical assistance that occurred from February through November 2013 because she failed to report a relevant increase in her income to the county agency.
2. The petitioner did not receive an overpayment of medical assistance from June 2012 through January 2013.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 8th day of April, 2014

\sMichael D. O'Brien
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 April 8, 2014.

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