



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/155614

PRELIMINARY RECITALS

Pursuant to a petition filed February 19, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human [REDACTED] in regard to Medical Assistance, a hearing was held on March 19, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of BadgerCare Plus.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health [REDACTED]
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Aaron Borreson

Eau Claire County Department of Human [REDACTED]
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The county agency notified the petitioner on November 22, 2013, that it would seek to recover a \$1,025.03 overpayment of BadgerCare Plus that allegedly occurred from December 2012 through

October 2013. This included \$857 in unpaid premiums and \$168.03 in capitation fees paid on the petitioner's behalf by the State of Wisconsin. The agency broke the overpayment down as follows:

- | | | |
|----|-----------------|-------|
| a. | December 2012: | \$84 |
| b. | January 2013: | \$85 |
| c. | February 2013: | \$102 |
| d. | March 2013: | \$80 |
| e. | April 2013: | \$102 |
| f. | May 2013: | \$0 |
| g. | June 2013: | \$0 |
| h. | July 2013: | \$81 |
| i. | August 2013: | \$161 |
| j. | September 2013: | \$20 |
| k. | October 2013: | \$142 |
3. The petitioner completed her BadgerCare Plus renewal over the telephone on November 8, 2012. She signed her renewal on November 21, 2013.
4. The county agency notified the petitioner on November 23, 2012, that she and her children would receive BadgerCare Plus. That notice informed her: "If your household's total monthly income (before taxes) goes over \$1,590.83, you must report it by the 10th day of the next month."
5. The petitioner was on call for [REDACTED] [REDACTED] from June 12, 2012, through July 12, 2013. She was not working the day she completed her online review but did work before and after that date.
6. The petitioner received the following monthly income through [REDACTED] [REDACTED]:
- | | | |
|----|----------------|------------|
| a. | December 2012: | \$1,666.50 |
| b. | January 2013: | \$1,630.75 |
| c. | February 2013: | \$1,745.43 |
| d. | March 2013: | \$1,490.50 |
| e. | April 2013: | \$2,112 |
| f. | May 2013: | \$1,581.25 |
| g. | June 2013: | \$1,493.25 |
| h. | July 2013: | \$1,056 |
7. The petitioner received the following monthly child support payments:
- | | | |
|----|-----------------|----------|
| a. | December 2012: | \$743 |
| b. | January 2013: | \$800 |
| c. | February 2013: | \$800 |
| d. | March 2013: | \$800 |
| e. | April 2013: | \$426.74 |
| f. | May 2013: | \$0 |
| g. | June 2013: | \$0 |
| h. | July 2013: | \$724 |
| i. | August 2013: | \$724 |
| j. | September 2013: | \$181 |
| k. | October 2013: | \$614.95 |
8. The petitioner received the following monthly income from employment other than [REDACTED] [REDACTED]:
- | | | |
|----|-----------------|------------|
| a. | July 2013: | \$546.08 |
| b. | August 2013: | \$2,262.60 |
| c. | September 2013: | \$3,290.49 |
| d. | October 2013: | \$2,286.92 |

9. The petitioner did not notify the agency within 10 days that her income had increased in December 2012.

DISCUSSION

The county agency seeks to recover \$1,025.03 from the petitioner for an alleged overpayment of BadgerCare Plus benefits provided to her and her children from December 2012 through October 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.

All medical assistance recipients must report changes to the agency within 10 days. Wis. Admin. Code, § DHS § 104.02(6) Those receiving BadgerCare Plus had to report changes in income must be reported when the income reached any of the following levels:

- 100% FPL
- 133% FPL
- 150% FPL
- 185% FPL
- 200% FPL
- 250% FPL
- 300% FPL
- 350% FPL
- 400% FPL

BadgerCare Plus Eligibility Handbook, § 27.3.

The petitioner was an ongoing recipient of BadgerCare Plus whose benefits were reviewed in November 2012. Around that time, she had occasionally taken jobs provided by [REDACTED] [REDACTED], a temporary employment agency, but she had no ongoing working assignment when she renewed her benefits. She indicated that her only income was child support. The agency continued her participation in the program as of January 1, 2013. By December 2012, her income increased significantly because she began working

steadier and longer hours at [REDACTED] [REDACTED]. She did not believe she had to report this because it was not regular employment. In July 2013, she found full-time employment. She contends she reported this, but the agency has no record of it. She is responsible for any overpayment that occurred because she failed to report income, even if she misunderstood the reporting requirement. She is not responsible for any overpayment that occurred because the agency failed to act on any change in income that she did report.

The period of the overpayment depends upon whether she failed to report information about her income during her renewal application process or whether she failed to report a subsequent change of income. This is based upon policy in the *BadgerCare Plus Handbook*, § 28.4.1. It states the following concerning the overpayment period:

Misstatement or Omission of Fact

If the overpayment is a result of a misstatement or omission of fact during an initial BC+ application or review, determine the period for which the benefits were determined incorrectly and determine the appropriate overpayment amount

Failure to Report

For ineligible cases, if the overpayment is a result of failure to report a required change, calculate the date the change should have been reported and which month the case would have closed or been adversely affected if the change had been reported timely.

This means that if the petitioner provided incorrect information on an application or review, the overpayment period begins immediately. But if she failed to report a change of income that occurred after the review, the overpayment would not begin until the second month after the change. This is because, given her fluctuating income while working for a temporary agency, she could not provide a monthly income until the month was over, which means that the report would then be due on the 10th day of the next month. The agency would then change her benefits the month after the report was changed.

For the entire month of October 2012, the petitioner received one paycheck, on October 14, for \$67.06. This was the first paycheck she had received since September 2, 2012. In November 2012, she was paid \$64.75 on both November 4 and November 18. She was then paid \$236.50 on December 2, 2012, for work that would have occurred before then. She received four more weekly paychecks December ranging from \$236.50 to \$440. According to [REDACTED] [REDACTED]' website, workers who properly submit their time "will be paid within seven days from the end of the pay period." http://www.mykelly.com/eprise/main/web/us/mykelly/en/getting_paid.

The petitioner completed her renewal over the telephone on November 8, 2012, and signed it on November 22, 2012. Given that she was paid \$236.50 on December 2, 2012, or 10 days after she signed her application, she may have started another job, but I cannot determine this positively because her later paychecks were larger, meaning that this could have been a partial week, and I do not know how close to the end of the pay period she received her paycheck. I will give her the benefit of a doubt and find that she was neither working nor knew when she would work again when she signed her renewal application. As a result her overpayment period began on February 1, 2013, rather than December 1, 2012, as the agency determined.

The next question is when the petitioner's overpayment period ended. Because the Department can collect medical assistance overpayments only if she failed to report her change of income, the question is whether the preponderance of the credible evidence supports her contention that she notified the agency after she began regular employment in July 2012. It does not. In making this finding, I am aware that it conflicts with the finding in her FoodShare disqualification hearing that she did notify the agency. However, the burden of proof in that hearing was the more rigorous "clear and convincing evidence." Further, this is the second time I have been able to review this information, and this extra scrutiny casts

doubt on her contention. There is no documentation in the agency's notes that it received any notice from her. This by itself is not conclusive because each month several petitioners testify in hearings I hold that they have sent information to the various consortia or the change center and that there is no record of it; some of these claims are verified by documentation such as facsimile transmissions with automatic dates and times stamped on them. In the petitioner's matter, there is the additional fact that she had earned \$1,000 for seven consecutive months before she reported any change. I understand why someone may not believe she had to report sporadic work that may or may not continue, but the petitioner's employment after November 2012 was no longer sporadic. Based upon this history of not reporting her employment, I find that the agency has met its fairly low burden of proving that she did not do so in July 2013. Therefore, the agency can recover the portion of the overpayment that occurred after that date.

BadgerCare Plus overpayments are calculated for ineligible households by adding all medical expenses and capitation rate fees paid on behalf of the household and then subtracting any premiums the household has paid while incorrectly receiving benefits. *BadgerCare Plus Handbook*, § 28.4.2. The agency has provided its calculation worksheets, and it followed these instructions. I find no errors in its calculations, and the petitioner does not challenge them. Of the total overpayment, \$169 occurred in December 2012 and January 2013. Because her benefits would not have changed until February 2013 if she had correctly reported her income, I will remand this to the county agency with instructions to reduce the overpayment by that amount.

CONCLUSIONS OF LAW

1. The petitioner did not misstate her income when she completed her renewal in November 2012.
2. The petitioner failed to report a change of income that began in December 2012.
3. The petitioner must repay all additional medical assistance benefits she received because she failed to report her change of income.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reduce the overpayment of BadgerCare Plus sought from the petitioner for the period of December 2012 through October 2013 from \$1,025.03 to \$859.03.

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 [REDACTED], 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 31st day of March, 2014

\sMichael D. O'Brien
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 March 31, 2014.

Eau Claire County Department of Human [REDACTED]
Public Assistance Collection Unit
Division of Health Care Access and Accountability