



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/155941

PRELIMINARY RECITALS

Pursuant to a petition filed March 06, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Barron County Department of Human Services in regard to Medical Assistance, a hearing was held on May 13, 2014, at Barron, Wisconsin. A hearing scheduled for April 15, 2014, was rescheduled at the petitioner’s request.

The issue for determination is whether the petitioner 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: Candi Gillette

Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Barron County.
2. The county agency seeks to recover \$957 in medical assistance provided to the petitioner from October 1, 2012, through February 28, 2013, and \$789 provided from July 1 – 31, 2013.

3. From June 2012 through July 2013, the petitioner's household included two adults and two children under 19 years old.
4. The county agency notified the petitioner on June 11, 2012, that she must report if her monthly household income exceeded \$2,993.60. It notified her on February 22, 2013, that she must report if her monthly income exceeded \$3,925.
5. The petitioner's household income in August 2012 was \$3,001.38. She reported a change of income in February 2013.
6. The petitioner's household income was \$5,762.50 in November 2012, \$4,302.12 in December 2012, \$4,201.98 in January 2013, and \$3,786.87 in February 2013.
7. The petitioner paid \$121 per month in premiums from October 2012 through February 2013.
8. The petitioner's household income was \$5,045.49 in May 2013. She did not report this to the county agency.
9. The petitioner's household income in July 2013 was \$4,784.31.
10. Medicaid paid \$964 on the petitioner's behalf in July 2013. She paid a \$221 premium that month.

DISCUSSION

The county agency seeks to recover a total of \$1,746 from the petitioner for an alleged overpayment of BadgerCare Plus benefits provided to her household from October 2012 through February 2013 and in July 2013 because it contends that she failed to report income that affected her household's benefits. During this period, BadgerCare Plus provided medical assistance to children under 19 and their parents. Wis. Stat. § 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.
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).

The rules for BadgerCare Plus have changed significantly this year. The rules cited in this decision refer to those in effect when the petitioner was receiving benefits. Eligibility and premiums depended upon total household income. *See* Wis. Stat. § 49.471(1)(f). During the period of the alleged overpayment, most generally could not receive benefits if their household's income exceeded 200% of the federal poverty level. This limit usually did not apply to children. Wis. Stat. § 49.471(4)(a). When a household's income increased from below 100% of the federal poverty level to above that amount, those already receiving benefits continued to be eligible for another year under a BadgerCare extension regardless of their income. *BadgerCare Plus Eligibility Handbook*, § 18.1. 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. The county agency notified her on June 11, 2012, that she must report a change of income if her monthly income exceeded \$2,993.60. Her household income was \$3,001.38 in August 2012, but she did not report this until her next reporting date. Under the reporting rules, she should have notified the county agency by September 10, 2012, and her benefits would have changed in October, 2012. After reviewing her matter, the agency notified her on February 22, 2013, that she must report if her monthly income exceeded \$3,925. Her income was \$5,045.49 in May 2013, but she did not report this either. If she had reported by June 10, 2013, as the rules required, her benefits would have changed in July 2013. As alluded to earlier, the county agency began the overpayment periods on October 1, 2012, and July 1, 2013, which are the dates her benefits would have changed.

The petitioner's household income included bonuses that were received irregularly but became more regular. She testified that she was grateful for the program but that she did not intentionally defraud it. Rather, she found the reporting requirements confusing. I do not doubt her testimony. It is easy to overlook a reporting requirement buried in a several-page notice that likely had been thrown away months earlier—especially when the income that pushes the household over that limit is sporadic and does so by less than \$10, as it did in August 2012. Nevertheless, the issue is not whether she intentionally violated the program's rules but whether she failed to report income that would have changed her benefits, regardless of whether the failure was intentional or neglectful. The petitioner concedes that she did not report income that pushed her over her reporting requirement.

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. Therefore, I must uphold its finding that her household received \$1,746 more in medical assistance than it was entitled to. She requests that the Division of Hearings and Appeals to forgive her debt, but the Division has no equitable powers that would let it consider the fairness of the situation and do this. Therefore, I must find that she has to repay this amount.

CONCLUSIONS OF LAW

The petitioner must repay an overpayment of medical assistance that occurred because she unintentionally failed to report an increase in her household income.

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 28th day of May, 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 May 28, 2014.

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