



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/156100

PRELIMINARY RECITALS

Pursuant to a petition filed March 13, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BC+), a hearing was held on April 17, 2014, at Green Bay, Wisconsin. The hearing record was held open for seven days for a possible submission (old lease) from the petitioner, which was not received.

The issue for determination is whether the petitioner was overpaid in MA/BC+ benefits from November 1, 2009 – August 31, 2012 (non-continuous).

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: Judy Steffens, ES Spec.
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. The petitioner's household was certified for MA from at least November 2009 intermittently through August 31, 2012. During that period, she did not list [REDACTED] [REDACTED] as a member of her MA household, with the exception of February through April 2010, and November 2010 through April 2011. He is the father of two children-in-common with the petitioner. Per state statute, if he was residing with the petitioner, he was a mandatory member of her MA household. The petitioner received MA as a household consisting of herself and one child by [REDACTED] [REDACTED] (later, two children) from at least:
- **November 1, 2009 through January 31, 2010** (petitioner ineligible, child eligible),
 - **June 1, 2010 through November 30, 2010** (petitioner ineligible, premium needed for child for September/October/November), and
- [gap for 2011 while case was in MA extension status, followed by pregnant woman status, with higher income limits]
- **April 1, 2012 through August 31, 2012** (petitioner ineligible for April-June, premiums due July-August).
3. On February 5, 2014, a *Wisconsin Medicaid & BadgerCare Plus Overpayment Notice* and worksheets were sent to the petitioner, advising that she had been overpaid \$3,509.75 in MA/BC+ for the 11/1/2009 – 7/31/2012 (non-continuous) period. Exhibit 1.
4. The petitioner married [REDACTED] [REDACTED] in October 2010. She did not *timely* report that he was residing with her for the overpayment periods above. However, she did report his presence in the household in time to affect the February through April 2010 benefits; that report was apparently not acted upon. The petitioner received no MA services for May 2010.
5. The petitioner and her husband lived together at 1866 [REDACTED] [REDACTED], Wisconsin from August 2009 through July 2012. The husband had earned income during the overpayment months. When his income was added to her income (if any), the total income made the household either (1) ineligible for any MA/BC+, or (2) subject to premiums, during the overpayment months. The petitioner went on to have a child in common with her husband in August 2011.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect 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 [REDACTED] 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 [REDACTED] 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.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a “no eligibility” case, to base the overpayment determination on the actual MA/BCP charges paid, plus any premiums that would have been owed. *BCPEH*, §28.1 – 28.2. The petitioner does not challenge the accuracy of the MA charges, the arithmetic of the agency's overpayment calculation, or the amount of ██████'s income.

In this case, the agency asserts that the petitioner failed to report the father of her child as being in her household beginning with the November 2009 benefit month. Even if he briefly left, the petitioner then failed to report his return. The BCP statute requires the recipient to report changes that might affect eligibility. Wis. Stat. §49.471(6)(h). See in accord, *BCPEH*, §27.2. The combination of the father's income plus the petitioner's income, caused her income to be above 200% of the federal poverty level (FPL) for most of the overpayment months. When her income exceeded 200% FPL, she was not eligible for benefits. Wis. Stat. §49.471(4)(a). In several of the overpayment months, the petitioner was not ineligible, but she should have paid a premium, and the premium amount is the overpayment amount. The months where an adult premium was due were July and August 2012.

The petitioner asserts that Mr. ██████ was not living with her, other than the times when she reported him as present.

The agency correctly noted that the husband was interviewed by a sheriff's detective on July 19, 2012. On that date he signed a statement that declared that he had been living with the petitioner for the last three years, and that they had married on August 8, 2009 [incorrect date]. Other evidence that links the husband to the petitioner's household during the overpayment period includes the husband's driver's license and vehicle registration with the Wisconsin DOT showing the ██████ ██████ address, a check with the postal service indicating that the husband received mail at the ██████ ██████ address, and a report to the child support agency that the husband lived at the ██████ ██████ address (he pays support for a third child, not with the petitioner). The petitioner contends that her husband was living elsewhere during most of the overpayment months. She testified that he got the marriage date wrong, and that it was actually October 2010. She concedes that he was present in her household from September 2009 through most of 2010, but claims that she reported his presence. The agency asserts that it has no record of a report of his presence in the household until November 2010. The petitioner again reported his departure from the household on May 1, 2011.

The petitioner did not report ██████'s presence in her household at the time of her September 2009 application. I have reviewed the notice that opened her FoodShare/MA case, dated October 2, 2009. ██████ is not listed as a household member. If the agency's household information was incorrect, the petitioner should have immediately contacted the agency to correct it.

The petitioner did report ██████ in the household by December 28, 2009, affecting February 2010 onward. *See*, notices dated 12/28/2009 and 1/11/2010. However, she then reported him as being out of the household on her review in May 2010. *See*, review summary notice, dated 5/3/2010. The agency's exhibits did not include contemporaneously kept Case Comments from 2010. The petitioner then failed to report ██████'s return to the household until late October or November 2010, and the agency then correctly placed the case in “extension status” (higher income allowed) until late 2011. Because the notice history

indicates that the petitioner must have reported [REDACTED] as being in the household during the overpayment months of February 2010 through April 2010, I conclude that any overpayment amounts for those three months should be subtracted from the overpayment total. However, the overpayment amount is shown as zero for each of these three months, due to lack of use of MA benefits.

The petitioner's regular BC+ benefits were closed for several months after November 2010, but legitimate coverage remained in place under "extension status," which allows for higher income. The petitioner gave birth to [REDACTED]'s son in August 2011. Both her reported remarks in 2011 Case Comments and the notices dated May 18 and September 8, 2011 reflect that she was falsely reporting her husband as being out of her household during the latter half of 2011. When the petitioner's pregnancy and extension status expired (allowing higher income), the petitioner continued to report [REDACTED] as out of the house in 2012.

The petitioner's husband testified that he did not reside with the petitioner during the overpayment months. He asserted that he bounced around between his mother's residence in Oneida, Wisconsin, and his grandmother's residence in [REDACTED], Wisconsin. This testimony was vague and unconvincing. The hearing record was held open to allow the petitioner to submit such documentation (an *old* [REDACTED] [REDACTED] lease from the overpayment months) to this ALJ post-hearing; it was not received. The petitioner's assertions and testimony are not credible. I conclude that the agency has established by a preponderance of the credible evidence that the petitioner was overpaid MA/BC+, and that the overpayment may be recovered.

CONCLUSIONS OF LAW

1. The petitioner failed to report Mr. [REDACTED] as being in her household in time for the November 2009 benefit month, resulting in the beginning of a BC+ overpayment.
2. The petitioner was overpaid \$3,509.75 MA/BC+ from November 30, 2009 through August 31, 2012 (non-continuous).
3. Although the incorrect MA/BC+ certification for the February through April 2010 period was *not* due to client error, the petitioner did not use MA services in those months, so there is no overpayment amount to be reduced for those months.
4. The Department/county agency may correctly pursue recovery of the overpayment.

THEREFORE, it is

ORDERED

That the petition 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 15th day of May, 2014

\sNancy J. Gagnon
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 May 15, 2014.

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