# STATE OF WISCONSIN
## Division of Hearings and Appeals

In the Matter of:

[redacted]

**DECISION**

MOP/156169

The attached proposed decision of the hearing examiner dated June 23, 2014, is modified as follows and, as such, is hereby adopted as the final order of the Department.

## PRELIMINARY RECITALS

Pursuant to a petition filed March 17, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services ["County"] in regard to BadgerCare Plus Medical Assistance ["BCMA"], a Hearing was held via telephone on June 12, 2014. At petitioner's request a Hearing scheduled for May 8, 2014 was rescheduled.

The issue for determination is whether the following BCMA overpayment was calculated correctly: Claim #[redacted], September 2012 to June 2013; $9,478.66.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Petitioner's Representative:

Ronald E. English III
Attorney
Hippenmeyer, Reilly, Moodie & Blum, S.C.
720 Clinton Street
P.O. Box 766
Waukesha, WI
53187-0766

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Deborah Bohlman, ESS
Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Fond Du Lac County, Wisconsin.
2. The County has determined that petitioner must repay the following BCMA overpayment: Claim #[redacted]; September 2012 to June 2013; $9,478.66.
3. In 2014, when calculating the amount of the BCMA overpayment for Claim #[redacted], Child Support ["CS"] income was used.
4. In 2014 the amount of CS used by the County in calculating the amount of Claim #[redacted] was based on the last report of CS made to the County by petitioner in February 2013 (the average CS for November 2012, December 2012, and January 2013 was used).
5. During the time period of the overpayment for Claim #[redacted] for at least some months, the actual amount of CS received by petitioner was less than the average used by the County to calculate the amount of Claim #[redacted].
6. After her report in February 2013 petitioner never reported to the County that her CS decreased.

## DISCUSSION

Petitioner argues that her actual CS should be used to calculate BCMA overpayment Claim #[redacted], instead of using an amount based on the last report of CS made to the County by petitioner in February 2013 (the amount used was the average CS for November 2012, December 2012, and January 2013 was used)[1].

When calculating the amount of BCMA overpayments the following must be used: actual income that was reported or required to be reported in determining if an overpayment has occurred. *BadgerCare + Eligibility Handbook*, ["BC Handbook"] 28.4.2; *Process Help*, 31.3.4.2. After her report in February 2013 petitioner never reported to the County that her CS decreased. Further, only increases in income, not decreases, are required to be reported. BC Handbook, 27.3.

As better explained in the *Medicaid Eligibility Handbook* ["MEH"] "Use the actual income received by the member in determining if an overpayment has occurred." MEH 22.2.2.2. An overpayment occurs only when a member receives BCMA if he or she should not have. Therefore, actual circumstances, including actual income should be used in making that determination.

## CONCLUSIONS OF LAW

Petitioner's decreased child support amount should be used to calculate her actual income to determine the amount, if any, of her BCPA overpayment.

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[1] CS amounts and payment dates frequently fluctuate. For this reason it is acceptable to use average CS paid in the prior 3 months. *Process Help*, 62.2.4. Petitioner does not challenge this.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the County to redetermine petitioner's overpayment using her actual income with decreased child support payments and notify petitioner of such redetermination.

## 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, WI, 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 request (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 17 day of September, 2014.

Kevin E Moore

Kevin E. Moore, Deputy Secretary
Department of Health Services

FH [redacted]

# STATE OF WISCONSIN
## Division of Hearings and Appeals

In the Matter of:

[redacted]

**PROPOSED DECISION**

MOP/156169

## PRELIMINARY RECITALS

Pursuant to a petition filed March 17, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services ["County"] in regard to BadgerCare Plus Medical Assistance ["BCMA"], a Hearing was held via telephone on June 12, 2014. At petitioner's request a Hearing scheduled for May 8, 2014 was rescheduled.

The issue for determination is whether the following BCMA overpayment was calculated correctly: Claim # [redacted] September 2012 to June 2013; $9,478.66.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

Ronald E. English III
Attorney
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By: Deborah Bohlman, ESS
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87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Fond Du Lac County, Wisconsin.
2. The County has determined that petitioner must repay the following BCMA overpayment: Claim # [redacted]; September 2012 to June 2013; $9,478.66.
3. In 2014, when calculating the amount of the BCMA overpayment for Claim # [redacted] Child Support ["CS"] income was used.
4. In 2014 the amount of CS used by the County in calculating the amount of Claim # [redacted] was based on the last report of CS made to the County by petitioner in February 2013 (the average CS for November 2012, December 2012, and January 2013 was used).
5. During the time period of the overpayment for Claim # [redacted], for at least some months, the actual amount of CS received by petitioner was less than the average used by the County to calculate the amount of Claim # [redacted].
6. After her report in February 2013 petitioner never reported to the County that her CS decreased.

## DISCUSSION

Petitioner argues that her actual CS should be used to calculate BCMA overpayment Claim # [redacted] instead of using an amount based on the last report of CS made to the County by petitioner in February 2013 (the amount used was the average CS for November 2012, December 2012, and January 2013 was used)[1].

When calculating the amount of BCMA overpayments the following must be used: actual income that was reported or required to be reported in determining if an overpayment has occurred. *BadgerCare + Eligibility Handbook*, ["BC Handbook"] 28.4.2; *Process Help*, 31.3.4.2. After her report in February 2013 petitioner never reported to the County that her CS decreased. Further, only increases in income, not decreases, are required to be reported. BC Handbook, 27.3. Therefore, the County was correct to calculate BCMA overpayment Claim # [redacted] using an amount of CS based on the last report of CS made to the County by petitioner in February 2013.

It is noted that the *Medicaid Eligibility Handbook* ["MEH"] states (under the heading "Overpayment Amount"): "Use the actual income received by the member in determining if an overpayment has occurred." MEH 22.2.2.2. This *Decision* will be issued as a *Proposed Decision* to allow the Secretary of the Wisconsin Department of Health Services ["DHS"] an opportunity to address this apparent inconsistency between the BC Handbook (and Process Help) and the MEH. The DHS Secretary will issue the *Final Decision* in this matter. Wis. Admin. Code § HA 3.09(9)(a) (February 2013).

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[1] CS amounts and payment dates frequently fluctuate. For this reason it is acceptable to use average CS paid in the prior 3 months. *Process Help*, 62.2.4. Petitioner does not challenge this.

## CONCLUSIONS OF LAW

For the reasons discussed above, the following MA overpayment was calculated correctly: Claim # [redacted] September 2012 to June 2013; $9,478.66.

**THEREFORE, it is**

## ORDERED

That, if this *Decision* is adopted by the DHS Secretary as the *Final Decision* in this matter, the petition for review herein be and the same is hereby DISMISSED.

## NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Health Services for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 23 day of June, 2014

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals