



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/156249

PRELIMINARY RECITALS

Pursuant to a petition filed March 20, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on May 12, 2014, at Janesville, Wisconsin. At the request of the parties, the record was held open for one month for consecutive closing arguments and documents to the Division of Hearings and Appeals (DHA) (and exchanged between the parties). The parties timely submitted their arguments to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly determined that petitioner was overpaid a total of \$1,558.42 in BadgerCare (BC) benefits (monthly BC payments, unpaid premiums and capitation fees for petitioner) during the period of December 1, 2012 to September 30, 2013, due to petitioner's failure to timely report her return to substitute teacher employment and income which resulted in household income above the BadgerCare income eligibility limit during some of the overpayment period and unpaid BC premiums and unpaid capitation fees.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Laura Middleton, ESS
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County who resides with her one child. Her boyfriend is not included in her BadgerCare group or eligibility determination.
2. The petitioner received Badger Care (BC) Plus benefits for her household during the period of December 1, 2012 to October 1, 2013.
3. The petitioner completed her BC renewal on September 25, 2012, and signed a Notice of Responsibilities which stated that petitioner must promptly and accurately notify the county agency of her household's income and changes to her household's income.
4. The petitioner was notified in an October 26, 2012 Notice of Decision that she was required to report to the county agency by the 10th of the next month any change in her household income, if her household income went above \$1,260.83. Petitioner failed to do so.
5. The petitioner had the following monthly earned income as a substitute teacher for the [REDACTED] which was not reported to the county agency: a) December, 2012 - \$2,550; b) January, 2013 - \$1,950; c) February, 2013 - \$2,795; d) March, 2013 - \$4,035; e) April, 2013 - \$2,100; May, 2013 - 3,000; f) June, 2013 - \$2,542; g) July, 2013 - \$807.35; h) August, 2013 - \$2,076; and i) September, 2013 - \$2,662.08.
6. The petitioner's household's income was above the BadgerCare income limit of \$2,585.00 (200% FPL) for a household of two (petitioner and her child) during the months of February and March, 2013; May and September, 2013. Petitioner owed the following BC premiums for herself which were not paid: a) January, 2013 - \$78; b) April, 2013 - \$95; c) June, 2013 - \$147; and d) August, 2013 - \$93.
7. During August, 2013, the county agency received a State Wage match (SWICA match), and discovered that petitioner had failed to report her return to employment during October, 2012 at the [REDACTED] (reflected in her October 26, 2012 paycheck from the school district).
8. Petitioner had the following Medicaid payments for when she incorrectly received MA benefits, but was above the income eligibility limit for these months: a) February, 2013 - \$290.01; b) March, 2013 - \$46.81; and c) September, 2013 - \$22.10.
9. Due to petitioner's household income, the petitioner owed the following BC capitation fees which were not paid to the county agency: a) December, 2012 - \$157.62; b) February and March, 2013 - \$156.55; c) May, 2013 - \$156.64; and d) September, 2013 - \$159.14.
10. The county agency sent a February 26, 2014 BC Overpayment notice to the petitioner stating that she received an MA overpayment of \$1,558.42 during the overpayment period of December 1, 2012 to September 30, 2013, due to client error.
11. The basis for the \$1,558.42 BC overpayment was that petitioner failed to timely report her return to employment and income for the [REDACTED] to the county agency which began during October, 2012. As a result petitioner's household's income was above the BC income eligibility limit for some months and that she owed BC premiums as well as capitation fees.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (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 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.**

(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.wi.gov/bcplus/> :

28.1 OVERPAYMENTS.

An "overpayment" occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. **Concealing or not reporting income.**
2. **Failure to report a change in income.**
3. Providing misinformation at the time of **application** regarding any information that would affect eligibility.

(Emphasis added).

28.2 RECOVERABLE OVERPAYMENTS.

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

1. **Applicant /Member Error**

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates

(financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

...

2. Fraud. ...

BCPEH, §28.1 – 28.2.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, during the hearing and while the record was held open, the county agency presented a well-organized and documented case to establish that it was correctly pursuing an MA overpayment against the petitioner. During August, 2013, the county agency discovered through a State Wage match that petitioner failed to report her return to employment as a substitute teacher during October, 2012 at the [REDACTED]. The agency investigated the matter further, and confirmed that petitioner failed to report her monthly earned income, and that the household income was above the income eligibility limit for February and March, 2013 and May and September, 2013. See Finding of Fact #6 above. The petitioner also owed capitation fees for December, 2012, February and March, 2013, and May and September, 2013. See Finding of Fact #9 above. As a result, the county agency correctly determined that the petitioner was overpaid \$1,558.42 for her failure to timely report accurate total household income when she returned to employment during October, 2012 and continued through at least September, 2013.

During the May 12, 2014 hearing, petitioner was unable to refute the county's case, or undermine any of its substantial documentation that it was correctly seeking an MA overpayment against the petitioner during the period of December, 2012 to September 30, 2013. Further, the county representative explained that petitioner was notified of her responsibility to accurately and timely report all of her household's income information and any **changes** (including new employment) to household income, as she did sign a "Notice of Responsibility." Moreover, petitioner was also unable to establish any error in the county's calculation of her BC overpayment, or that she had made any payments towards that overpayment.

During the May 12, 2014 hearing, petitioner alleged vaguely that she did not understand the income limits or when she needed to report the increase in her earned income. She explained that she thought that her "irregular" and "inconsistent" income as a substitute teacher did not need to be reported. The petitioner was credible that she was confused, and that her failure to report her return to employment and income was not intentional. However, such confusion did not eliminate the petitioner's responsibility to report changes as she was notified in writing and orally that she needed to report changes (increases) in the household's income. In addition, there is no requirement that an MA overpayment be created by the intentional act of a BC member. Specifically the BadgerCare Plus Handbook provides that BC members must report their income changes when their total monthly gross income exceeds the percentages of the Federal Poverty Limit (FP for their group size by the 10th of the month following the month in which total income exceeds the previous threshold. BadgerCare Plus Handbook, section 27.3, "Income Change Report."

Based upon the answers during the hearing and in the detailed itemization of her overpayment provided by the county (including detailed BC payments, BC premiums, and capitation fees for petitioner), the petitioner was provided a full explanation of her BadgerCare overpayment. The petitioner was unable to establish with any specificity any error on the part of the county agency in concluding that her household income was above the income limit during some of the overpayment period or that she had improperly received MA payments on behalf of herself due to her household's income ineligibility or unpaid BC premiums or capitation fees. Accordingly, for the above reasons, I conclude that the county agency correctly determined that petitioner was overpaid a total of \$1,558.42 in BadgerCare (BC) benefits (monthly BC payments, unpaid premiums and capitation fees for petitioner) during the period of December 1, 2012 to September 30, 2013, due to petitioner's failure to timely report her return to employment and income which resulted in household income above the BadgerCare income eligibility limit during some of the overpayment period and unpaid BC premiums and unpaid capitation fees.

CONCLUSIONS OF LAW

The county agency correctly determined that petitioner was overpaid a total of \$1,558.42 in BadgerCare (BC) benefits (monthly BC payments, unpaid premiums and capitation fees for petitioner) during the period of December 1, 2012 to September 30, 2013, due to petitioner's failure to timely report her return to employment and income which resulted in household income above the BadgerCare income eligibility limit during some of the overpayment period and unpaid BC premiums and unpaid capitation fees.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 18th day of July, 2014

\sGary M. Wolkstein
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 July 18, 2014.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability