



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/156919

PRELIMINARY RECITALS

Pursuant to a petition filed April 14, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on July 24, 2014, at Racine, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of health care benefits from the Petitioner.

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: Kelly Kosloske
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Racine County.
2. On November 8, 2010, MF (current wife of Petitioner) applied for BC+. MF was pregnant at the time with Petitioner's child. MF resided with her mother. Petitioner and MF did not reside together at the time of application. She did not request BC+ benefits for the Petitioner.

3. On May 4, 2011, MF reported the birth of her son to the agency. She also reported that the Petitioner had moved into her home. The agency added the Petitioner and the minor child to MF's case. MF and the Petitioner were not married.
4. MF was approved for BC+ benefits effective December 1, 2010. BC+ benefits were approved for MF and for the minor child on May 5, 2011.
5. On October 19, 2011, the agency issued a Notice of Decision to MF informing her that MF, the minor child and DM were enrolled in BC+ benefits effective November 1, 2011. The notice informed MF that if her gross monthly household income exceeds \$3,088.34, she was required to report the income to the agency by the 10<sup>th</sup> day of the next month.
6. On December 5, 2011, MF started a new job. She did not report her employment to the agency. In March, 2012, MF's gross monthly income from Aurora Health Care was \$3,221.68.
7. On February 24, 2014, the agency issued a Medicaid/Badgercare Overpayment Notice to MF informing her that the agency intends to recover an overissuance of BC+ benefits in the amount of \$2,312.92 for the period of February 1, 2012 – October 31, 2012. The agency included a worksheet showing the gross monthly household income for February, 2012 was \$4,020.58. The notice included a report indicating the overpayment consists of the capitation amount for MF of \$1,330.60 and for the Petitioner of \$941.08 for the overpayment period.
8. On March 4, 2014, the agency issued a Notice and Repayment Agreement for MA/BC/BC+ Overpayment to MF.
9. On April 14, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(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.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

In this case, the agency presented evidence that it sent a notice of overpayment to MF (see agency Exhibit C) but no evidence that notice of the overpayment was sent to the Petitioner.

An elementary and fundamental requirement of due process is notice reasonably calculated to apprise interested parties of the pendency of the action. *Milliken v. Meyer*, 311 U.S. 457 (1940).

The agency is required to send a separate notice to each person it contends is liable for an overpayment. In this case, there was no evidence presented to demonstrate that the agency sent a notice to the Petitioner. The only evidence presented by the agency includes notices sent to MF but nothing to the Petitioner. Without such notice, I must conclude the Petitioner has not received adequate due process.

Further, the agency presented no evidence to demonstrate that the basis for the overpayment was correct. The agency presented MF's gross wages for the overpayment period from Aurora but presented no evidence of the Petitioner's income. Without evidence of all of the household income, it is not possible for me to find that the agency properly determined the household income exceeded the gross income limit for the program.

At the hearing, the Petitioner contends that he never applied for BC+ benefits and was never apprised that he was receiving them. He concedes he was not eligible for benefits because he had insurance through his employer and he was aware that the household income might exceed the program limit.

I note that MF applied for benefits before she lived with the Petitioner and did not request benefits for him at that time. The agency added the Petitioner to the household in May, 2011 when MF reported he was living with her. However, while MF and the minor child were opened for health care benefits at that time, the Petitioner was not. The Petitioner was not opened for BC+ benefits until October, 2011 and there was no explanation why Petitioner was opened for benefits at that time.

It is clear that the Petitioner should be included in the household for determining eligibility. This is so even if the Petitioner did not request BC+ benefits. BC+ Handbook, § 2.3.1. However, whether the Petitioner should have received benefits if there was no request for benefits is less clear. The agency did not present any evidence to demonstrate that the Petitioner or MF actually requested benefits for him. The application submitted by the agency clearly does not include a request for benefits for the Petitioner. Without more evidence, I cannot make a conclusion about whether MF requested benefits for the Petitioner and/or whether the Petitioner should have received benefits as part of the assistance group if no request for benefits was made by or for him. Specifically, I cannot conclude whether the issuance of BC+ benefits to the Petitioner was done in accordance with the regulations or whether he was issued benefits due to an agency error. If it was agency error, the agency cannot recoup the overpayment.

I note that this decision does not affect any overpayment action that the agency may have against MF. I am not aware if an appeal has been filed by MF. Nothing in this decision affects any right of overpayment the agency may have against MF and does not affect any appeal that may have been filed by MF.

In summary, the agency has failed to meet its burden to demonstrate that it properly seeks to recover an overpayment of BC+ benefits from the Petitioner for the period of February 1, 2012 – October 31, 2012 because it has not demonstrated it provided adequate due process notice to the Petitioner, did not present sufficient evidence to demonstrate household income exceeded the program limits and did not present sufficient evidence to demonstrate that the Petitioner was properly issued benefits as part of MF's case.

### **CONCLUSIONS OF LAW**

The agency failed to meet its burden to demonstrate that it properly seeks to recover an overpayment of BC+ benefits from the Petitioner for the period of February 1, 2012 – October 31, 2012.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to rescind the recoupment action against the Petitioner and cease all collections actions against him. These actions shall be completed within 10 days of the date of this decision.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 31st day of July, 2014

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\sDebra Bursinger  
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 July 31, 2014.

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