



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/156948

PRELIMINARY RECITALS

Pursuant to a petition filed April 18, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Juneau County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on June 12, 2014, by telephone. A hearing set for May 20, 2014, as rescheduled at the petitioner’s request.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid \$2,515.69 in BCP benefits from July 2012 through June 30, 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: Diana Wood, ES Spec.  
Juneau County Department of Human Services  
Courthouse Annex  
220 E. LaCrosse Street  
Mauston, WI 53948

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Juneau County.

2. The petitioner was a BCP recipient from at least June 2012 through June 30, 2013. During that time, she received the benefits as a household that did not include another adult.
3. The petitioner married on July 14, 2012. Her husband resided with her thereafter. The petitioner did not report the husband's presence in her household until May 2013. The BCP case closed effective July 1, 2014 (notice dated June 3, 2013).

### 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 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.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 acknowledges that she did not timely report the addition of her husband to the household. She also does not challenge the accuracy of the MA charges or the arithmetic of the agency's overpayment calculation here.

She does dispute the propriety of the agency including the monthly HMO capitation fees as part of the overpayment, particularly in the months in which she utilized no health services. However, the MA overpayment statute does not exclude the capitation fees from "benefits incorrectly granted." The Department's policy examples are explicit in their inclusion of capitation fees in the overpayment amount:

<p><b>Example 3:</b> John and his family were determined eligible for BC+ in June. John accepted a new job in South Carolina and the family moved out of state on July</p>
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20th. Since they were no longer residents of Wisconsin, they were no longer eligible for BC+. However, because their move to South Carolina was not reported, capitation payments continued to be made for John and his family until the worker closed the case effective December 31st.

**What can now be recovered?**

Giving 10 days to report and following AA logic, the case would have closed August 31. Fee-For-Service claims **and/or HMO capitation payments** for September, October, November and December **are recoverable**.

*BCPEH*, § 28.2. Thus, the agency correctly included the capitation fees in the overpayment amount.

**CONCLUSIONS OF LAW**

1. The agency correctly determined the amount of the petitioner's BCP overpayment for the July 2012 through June 2013 period.

**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 28th day of July, 2014

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\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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 28, 2014.

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