



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/157095

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dunn County Department of Human Services in regard to Medical Assistance, a hearing was held on May 13, 2014, at Menomonie, Wisconsin.

The issue for determination is the petitioner must repay an overpayment of medical assistance.

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: Misty Berg

Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Dunn County.
2. The petitioner's wife applied for medical assistance online on March 6, 2013.
3. The Centralized Document Processing Unit notified the petitioner's wife on March 12, 2013, that she must verify her income and that her husband's employment had ended.

4. The petitioner's wife never returned any of the requested information, but her employer and her husband's former employer's did, which she and the petitioner were unaware of.
5. The petitioner began working soon after his wife applied for medical assistance. That employer provided subsidized health insurance for the entire family.
6. The agency approved BadgerCare Plus for the petitioner's family on April 5, 2013.
7. The petitioner was unaware that her benefits had been approved because she did not receive the notice indicating this.
8. The county agency seeks to recover \$2,944.91 in BadgerCare Plus benefits provided to the petitioner's household from June through December 2013.

DISCUSSION

The county agency seeks to recover \$2,944.91 from the petitioner and his wife for an alleged overpayment of BadgerCare Plus benefits provided to their family from June through December 2013 because it contends that she failed to report income that affected their benefits. BadgerCare Plus provides medical assistance Wisconsin residents who are not over 65 or disabled. During the period in question for this matter, the household also had to have a child under 19 in it. Wis. Stat. § 49.471. The program has had major changes this year. All legal references in this decision concern the law as it existed last year, unless otherwise noted.

The department may recover any overpayment of medical assistance that occurs because 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 [BadgerCare].
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.

Wis. Stat. § 49.497(1).

Eligibility and premiums depended upon total household income. *See* Wis. Stat. § 49.471(1)(f). During the period of the alleged overpayment, adults generally could not receive benefits if their household's income exceeded 200% of the federal poverty level. This limit generally did not apply to children. Wis. Stat. § 49.471(4)(a). Adults in households with income that exceeded 133% of the federal poverty level had to pay a premium. Premiums were not assessed for children until their income exceeded 200% of the federal poverty level. Wis. Stat. § 49.471(10)(b); *BadgerCare Plus Handbook*, 19.1.

All medical assistance recipients must report changes to the agency within 10 days. Wis. Admin. Code, § DHS § 104.02(6). Those receiving BadgerCare Plus had to report significant changes in income and new employment.

BadgerCare Plus Eligibility Handbook, § 27.3.

The petitioner's wife applied for BadgerCare Plus on March 7, 2014, when he had recently become unemployed. Soon after applying, he found new employment at a business that provided health insurance. The agency sent her requests for verification, which she ignored because her household no longer needed

the benefit. Unknown to her, her employers also received the verification and filled them out. After receiving these, the agency found the household eligible on April 4, 2014. If the petitioner's income had been reported, they would have been ineligible and premiums would have been assessed for their child. The petitioner and his wife contend that they never received this notice and never knew they were eligible. Nevertheless, throughout the year, the BadgerCare Plus program made capitation payments for their benefits even though they were now over the program's income limit. In addition, the agency did not assess premiums for the child in their household. The petitioner does not dispute that when these amounts are added together they equal \$2,944.91. The county agency ended the household's eligibility when no one completed the renewal that was due at the end of the year.

The petitioner's contention that he and his wife did not know they were eligible is credible because they never used the benefits in the eight months they had them. Although they did not seem to realize that they had the benefits, I am skeptical that they did not receive the notice. Still, mail does get lost or sent to the wrong address, and both spouses testified credibly that they did not receive the notice. I will accept their word. The overpayment rules found in Wis. Stat. § 49.497(1) do not clearly address this situation, but taken together the rules generally require some fault on the part of the recipient. In addition, the statute states that the agency "may" recover the overpayment, a term that generally means that the action is permissive rather than mandatory. The petitioner's wife had no reason to report a change when she did not realize she was eligible. Based upon this, I find that she and the petitioner are not responsible for repaying the overpayment.

CONCLUSIONS OF LAW

The petitioner is not responsible for repaying an overpayment of BadgerCare Plus that occurred from June through December.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it end its attempt to recover the overpayment of medical assistance received by the petitioner from June through December 2013.

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 5th day of June, 2014

\sMichael D. O'Brien
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 June 5, 2014.

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