



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████ ██████
██████████████████
██████████████████████████████

DECISION

MOP/157184

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 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 June 12, 2014, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged 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 is a resident of Dunn County.
2. The county agency seeks to recover \$2,578.97 in medical assistance provided to the petitioner's household from June through November 2013.

3. The county agency did not submit any evidence of the amount the BadgerCare Plus program paid in capitation fees and medical care on behalf of the petitioner's family.

DISCUSSION

The county agency seeks to recover \$2,578.97 in medical assistance provided to the petitioner's household from June through November 2013 because it contends that she failed to report income that affected their benefits. BadgerCare Plus provides medical assistance to children under 19 and their parents. Wis. Admin. Code, § 49.471.

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).

BadgerCare Plus eligibility and premiums depend 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. The amount of the overpayment. All medical assistance recipients must report relevant changes to the agency within 10 days. Wis. Admin. Code, § DHS § 104.02(6)

When determining an overpayment, the agency must use the recipient's actual income. If a recipient was ineligible for benefits, the agency must recover the capitation rate and any medical claims paid by the state. If the person was eligible for benefits, the agency must recover any premiums due. Premiums that have been paid are subtracted from those due. *BadgerCare Plus Handbook*, § 28.4.2.

Workers who appear in hearings are advocates for the agency's position. This means that they should present the basis of the agency's claim in a coherent manner understandable to the administrative law judge. The process begins with the agency's summary letter. A good summary letter in an overpayment matter provides the legal basis for the claim (including a citation to the policy on which the claim is based), the total amount of the overpayment, and how the agency arrived at this amount. The agency's summary statement indicated that petitioner underreported her and her husband's income and stopped reporting her oldest child's income when he turned 18. This caused higher premiums for her and her husband from June through August 2013, a premium for her son from September through November 2013, and her and her husband's ineligibility for September through November 2013. It does not state how much the total overpayment was or what it was each month. Because the letter did not state the amount of the overpayment, it did not state how the agency arrived at the overpayment. Nor does the letter include any citations to the policies or other law the agency relied upon. The agency did provide documentation that established what all of the household's relevant income was. It also included a worksheet that showed when the household was over the income limit and what additional premiums the

petitioner owed. However, neither that worksheet nor any of the other evidence submitted by the agency established what capitation fees and medical payments the program made during the months someone in the household was ineligible.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to recover the petitioner's benefits, the county agency is the moving party. The Department acknowledged the principle laid down in *Hanson* in *Final Decision No. ATI-40/87198* where Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case. Because the agency has not presented any evidence of the capitation and medical payments it has made on behalf of the petitioner's family, it is impossible to determine whether it correctly determined the amount of the overpayment. As a result, it has not met its burden of proof, and its action must be reversed.

CONCLUSIONS OF LAW

The county agency has not presented enough evidence to establish the amount of the overpayment.

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 take all steps necessary to end the collection of the overpayment that allegedly occurred from June through November 2013 and to remove any finding of an overpayment for that period from her record

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 9th day of July, 2014

\sMichael D. O'Brien
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 9, 2014.

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