FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/157256

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Calumet County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on June 24, 2014, at Chilton, Wisconsin. The hearing record was extended for submission of the petitioner's exhibits, which were received.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid in MA/BadgerCare Plus benefits from August 2013 through March 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jennifer Schmidlkofer, ES Spec.
Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Calumet County.
2. BCP is a variant of Medical Assistance in Wisconsin for low-income persons who are not elderly or disabled. The petitioner's household of three had an ongoing BCP case from at least June

2013 through March 2014. The household reported on May 21, 2013, that the petitioner's income at Schuh ended, with his last paycheck arriving June 7, 2013.

3. The petitioner began a job at [redacted] on May 29, 2013 (40 hours weekly x $13.49 hourly, or $2,158.40 monthly). Total household gross income exceeded the income limit for BC+ (200% FPL) in every month from June 2013 through March 2014, with the exception of August and September 2013 (premiums were owed for those two months). The household did not report that it was receiving income above the limit until at least December 2013.

4. The Department's contemporaneously kept business records, Case Comments, show no contact from the petitioner's household from May 13, 2013 through December 10, 2013.

5. The petitioner was not eligible for BCP from August 2013 through March 31, 2014. On April 11, 2014, the agency issued a *Wisconsin Medicaid & BadgerCare Plus Overpayment Notice* to the petitioner, stating that he had been overpaid $3,109.85 for the August 1, 2013 through March 31, 2014, period. The BCP program paid a monthly HMO capitation fee and other charges on his behalf during these months.

6. The petitioner proved at hearing that he and his daughter had health insurance coverage through his employer from January 2014 onward.

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-.2, 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.

In this case, the agency asserts that the petitioner failed to report the commencement of both the wife's employment (Res-Care) and the petitioner/husband's employment and, subsequently, the increase in their

income to above the 200% of the federal poverty level (FPL) for the overpayment months (except August and September 2013). When their income exceeded 200% FPL, they were not eligible for benefits. Wis. Stat. §49.471(4)(a). Based on their undisputed excess income, the agency came up with the overpayment amount. The petitioner does not challenge the agency's arithmetic, but does assert that the overpayment was not intentional. He asserts that that his wife reported the commencement of his job and/or requested cessation of BCP on approximately May 13, 2013.

The BCP statute requires the recipient to report changes that might affect eligibility:

> (**6**) MISCELLANEOUS ELIGIBILITY AND BENEFIT PROVISIONS. ...
> (h) Within 10 days after the change occurs, a recipient shall report to the department any change that might affect his or her eligibility or any change that might require premium payment by a recipient who was not required to pay premiums before the change.

Wis. Stats. §49.471(6)(h). See in accord, *BCPEH*, §27.2. Thus, the existence of the timely reporting requirement is clear. Again, the petitioner asserts that he did comply with this reporting requirement in May 2013.

The agency is supposed to make a record of all calls and other client contacts in its contemporaneously kept business record, Case Comments. Case Comments has no record of a contact from the petitioner's household from May 13, 2013 through May 21, 2013. On May 21, 2013, the Department received confirmation from the husband's past employer (Schuh) that his job ended in April 2013. On June 3, 2013, the Department issued written notice to the petitioner advising that all three household members were enrolled in BCP from June 2013 onward. No further contact was made by the petitioner's household until December 2013. A computer cross-match record alerted the agency on November 20, 2013, that the petitioner's daughter might have earnings from Homestead Care Center, and that she or some household member might have medical insurance through employment. The agency mailed a verification request to the household on November 21, asking for proof of the daughter's earnings by December 2. On December 3, 2013, the Department mailed written notice to the petitioner advising that he and his wife would be discontinued from BCP for failure to supply the requested verification. That notice also showed earned income amounts for the wife and daughter, but zero income for the petitioner. On December 10, the Department received verification that the daughter's job had ended. On December 11, 2013, the Department issued written notice to the petitioner advising that BCP would remain open for all three persons; income information was not displayed. In February 2014, the agency received a state wage cross-match showing wages for the petitioner, which prompted further investigation and led to the conclusion that an overpayment had occurred.

The petitioner's wife testified to her belief that she telephoned the Department on approximately May 13, 2013, to report the commencement of her husband's new job and/or to decline BCP. I did not find that she made this call because (1) there is no record of it in Case Comments, *and* (2) she did not react to and contact the Department after receiving the June 3 notice stating that all household members remained on BCP.

The next flurry of activity in this case began with the November 2013 cross-match report suggesting that the daughter had unreported earnings. The household belatedly responded to the resulting verification request, and established that the daughter no longer had these earnings.

The household's appeal letter states that the wife requested discontinuance of the household's BCP several times, to several different telephone numbers. At hearing, she claimed a more specific memory of a May 2013 date, which I did not find credible. She did not introduce a phone record to establish that she made such calls. My overall impression is that the wife is a [redacted]. She did not timely

report the commencement of her own new job, her husband's new job, or the daughter's job. On the other hand, she proved through EOB paperwork, that health insurance from the husband's employer was paying medical expenses for the husband and daughter from January 2014 onward. If that insurance was paying for the daughter, it is logical to assume that it was also paying for the wife. If they were all covered by other insurance, there was no reason to remain on BCP. No documentation of other insurance for dates prior to January 2014 was provided. My best guess is that the petitioner's wife did not actually attempt to request BCP discontinuance until she was reminded that it was still in force by the flurry of notices in December 2013. The Department has the burden of proof on overpayment cases. With considerable hesitation, I will give the petitioner the benefit of the doubt and conclude that the wife reported, to some Department number (perhaps not the correct one), in December 2013 that BCP should be discontinued. Thus, I will direct that the overpayment be reduced by eliminating the months of January through March 2014 from the overpayment period.

CONCLUSIONS OF LAW

1. The petitioner failed to timely report his increased income from May 13, 2013 through at least November 2013, resulting in the creation of a BCP overpayment.
2. The petitioner was overpaid BCP benefits from August through December 2013.
3. The petitioner was not overpaid BCP benefits from January through March 2014.

THEREFORE, it is **ORDERED**

That the petition is *remanded* to the agency with instructions to re-determine the petitioner's overpayment amount in accord with the Conclusions of Law above. This action shall be taken within 10 days of the date of this Decision. In all other respects, 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 23rd day of July, 2014

\sNancy J. Gagnon
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 23, 2014.

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