



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/157524

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 07, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Lincoln County Department of Social Services in regard to Medical Assistance, a telephone hearing was held on June 04, 2014. The record was held open for 10 days at the request of the parties. Additional documentation was received on June 5, 2014, and added to the record.

The issue for determination is whether the respondent has properly established an BadgerCare Plus (BCP) overpayment claim for which petitioner is liable.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Irene Lehman

Lincoln County Department of Social Services  
607 North Sales Street  
Suite 201  
Merrill, WI 54452

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Lincoln County.

2. The county agency alleges that the petitioner was overpaid \$1,142.00 in Medical Assistance benefits from June, 2013, through December, 2013, because it failed to correctly budget her adult child's income.
3. Petitioner's son turned eighteen years old on November 11, 2012. After the petitioner's son turned 19, he remained a member of the BCP household, and had earned income that was not reported.
4. The petitioner's son earned between \$10.00 and \$11.00 per hour during the overpayment period, and this income was not reported to the respondent.

### 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. ...

See Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. The instructions to the county agency as to calculate an overpayment are in the *BadgerCare + Eligibility Handbook*, §28.1, online at <http://www.emhandbooks.wi.gov/bcplus/>. That section states the following:

#### **28.1 OVERPAYMENTS.**

An "overpayment" occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. Concealing or not reporting income.
2. Failure to report a change in income.
3. Providing misinformation at the time of application regarding any information that would affect eligibility.

**28.2 RECOVERABLE OVERPAYMENTS.**

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

**1. Applicant /Member Error**

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment. ...

An overpayment occurs if the change would have adversely affected eligibility, the benefit plan or the premium amount.

In this case, the agency asserts that the petitioner failed to report the adult child's earned income. The agency calculated the \$1,142.00 overpayment amount. The petitioner challenges the agency's inclusion of payments pertaining to her adult son, after he turned 19, in calculating the overpayment.

The record was held open to allow the respondent time to research the issue of its failure to terminate the petitioner's son's BCP enrollment after his 19<sup>th</sup> birthday. In a submission following hearing, the respondent conceded that its computer system should have identified petitioner's son's upcoming November birthday in October, 2013. At that time, a worker should have run eligibility by the November cut off to close his BCP coverage effective November 30, 2013. See, Exhibit 9.

The failure by the respondent to take this action constitutes agency error. Overpayments resulting from agency error are not recoverable. Wis. Stat. § 49.497. As such, this matter shall be remanded to the respondent to re-determine the BCP overpayment. The petitioner has not established any other error in the calculation of the BCP overpayment.

**CONCLUSIONS OF LAW**

1. The respondent failed to close petitioner's son's BCP enrollment upon his 19<sup>th</sup> birthday.
2. The respondent's overpayment claim cannot include any overpayment resulting from agency error.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the respondent to review and recalculate overpayment Claim no. [REDACTED] and remove any overpayment related to petitioner's son after November 30, 2013. All actions required by this Order shall be completed within 10 days following issuance of this Decision. In all other regards, petitioner's appeal 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 1st day of July, 2014.

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\sPeter McCombs  
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 1, 2014.

Lincoln County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability