



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/157699

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 2014, under Wis. Stat. § 49.45(5), to review a decision by Waushara County Human Services to recover Medical Assistance, a hearing was held on June 25, 2014, by telephone.

The issue for determination is whether petitioner is liable for a BadgerCare Plus (BC+) overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Roxann Binkowski
Waushara County Human Services
P.O. Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waushara County.
2. Petitioner received BC+ MA for her, her boyfriend, and their children (petitioner and her boyfriend were married in late 2013, and I will refer to him as petitioner's husband hereafter). They did a FoodShare review in April, 2013, at which point they reported a new job for petitioner's husband at [REDACTED] [REDACTED]. The job would be 40 hours per week at \$16.50 per hour, which was verified with an Employer Verification form and the first pay stub (although the pay stub did include 10.5 hours or overtime).

3. On April 5, 2013, the agency sent petitioner a notice saying that all members of the household were eligible for BC+ with no premium, but that FoodShare was denied because income was over the limit. (The BC+ calculation budgeted only earned income of \$680 per week, which is \$2,720 per month; the FS calculation added in a son's Supplemental Security Income). The notice stated, on page 5, that if counted income rose above \$3,055.68, they must report the increase by the tenth day of the next month.
4. In September petitioner filed a BC+ review. The Employer Verification form included with the review showed that her husband received a \$5 per hour raise. Adult BC+ closed, and BC+ for the children remained open with a premium.
5. In December the agency received a state wage match for the second quarter, 2013. Petitioner's husband averaged \$4,042 per month in the second quarter, and it later was found that he averaged \$4,688 per month in the third quarter. The agency requested actual income from the employer, but the employer did not respond by the due date. The agency then utilized the monthly averages to determine if an overpayment occurred.
6. The agency determined that petitioner should have reported the income increase in May, which would have affected June BC+. It determined that there would have been premiums due from the adults totaling \$1,293 in the months of June through October, 2013.
7. The agency notified petitioner that she was overpaid \$1,293 in BC+ during that period in a notice dated April 29, 2014, claim no. [REDACTED]. Both adults are liable for the claim.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(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.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

In 2013 BC+ recipients had to report increases in income that put them over certain percentages of the federal poverty level. Handbook, App. 27.3. Notices issued to the recipients informed them of the levels at which they needed to report. Thus slight increases in income did not need to be reported, but significant ones did.

In their appeal letter petitioner and her husband stated that they were not told of the need to report the increased income. However, the April 5, 2013 notice issued after the new job was reported told them of the need to report income over \$3,055 per month.

Petitioner's husband did not contest that his income rose above the reporting level. He testified that he called the state call center when he realized that he was going to get his raise and was reassured that he did not have to report the increase until his next review (which he did).

The problem is that there is no record whatsoever of the call. There is nothing in the case notes, and petitioner's husband did not record who he talked to or even when the call was made. There is no record of what questions were asked or if petitioner's husband even identified himself so that the representative could look specifically into his case. Without some sort of record that someone at the county or state agency gave petitioner's husband incorrect information based on a specific question about his increased income, I simply cannot find that agency error caused petitioner to fail to report the increase in income.

I need to discuss two other issues. First, petitioner's husband complained that the agency did not allow his employer enough time to provide the income information. If his income did not actually increase until May or June, he can always provide that information for an adjustment. However, it appears that the increase occurred in April. Second, we briefly discussed a small FoodShare overpayment. However, after the hearing I noticed that the FoodShare overpayment occurred in 2012 and has long been repaid. It was not a new issue that arose in 2014.

CONCLUSIONS OF LAW

The agency correctly sought recovery of a BC+ overpayment caused by the failure to report an increase in income.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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

\sBrian C. Schneider
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.

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