



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/157957

PRELIMINARY RECITALS

Pursuant to a petition filed May 28, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on August 8, 2014, at La Crosse, Wisconsin. A hearing set for July 22, 2014, was rescheduled due to confusion by the petitioner.

The issue for determination is whether the petitioner was overpaid MA/BCP benefits from November 2011 through March 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Interpreter: [Redacted]



Respondent:

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

By: Bob Uebele, ES Worker
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of La Crosse County.

2. The petitioner's household was certified for BCP from October 2010 through March, 2014. During the October 2011- March 2014 period, she did not list her husband, [REDACTED] [REDACTED], as a member of her BCP household. [REDACTED] is the father of two children-in-common with the petitioner. Per state statute, if he was residing with the petitioner, he was a mandatory member of her MA household.
3. The petitioner and Mr. [REDACTED] resided together at [REDACTED] [REDACTED] from November/Oct 2011 through March 2014. In October 2011, the petitioner submitted a renewal report that showed Mr. [REDACTED] out of the household. As a result, the Department budgeted only the petitioner's income from [REDACTED] [REDACTED], which placed the household at 125% of the Federal Poverty Level (FPL). This made the remaining household members eligible for BCP without a premium.
4. On October 31, 2012, the petitioner signed off on an annual review form. It indicated that the household membership was limited to the petitioner and one minor child, JL. Household income was at 165% FPL. On October 15, 2013, the petitioner again signed a review form which declared that the household consisted of the petitioner and JL.
5. On March 1, 2014, the petitioner reported to the agency that Mr. [REDACTED] and both of their minor children were in the [REDACTED] [REDACTED] home.
6. Mr. [REDACTED] has been the owner of the property at [REDACTED] [REDACTED] throughout the overpayment period.
7. Mr. [REDACTED] has been employed at [REDACTED] [REDACTED] since 1991, including the November 2011 through March 2014 period. His annual gross earnings were \$37,317.43 in 2012, and \$38,158.73 in 2013. His monthly gross earnings from January through March 2014 averaged \$3,296.18. When the petitioner's earnings were added to Mr. [REDACTED]'s, the result was that any household adults were ineligible (over 200% FPL) for BCP from November 2011 through March 2014, and there was a premium liability for the child JL from November 2012 through October 2013.
8. BCP benefits/premium liabilities totaling at least \$7,601 were paid on the household's behalf during the November 2011 through March 2014 period.
9. On May 2, 2014, the Department issued a *Medicaid /BadgerCare/ Overpayment Notice*. The *Notice* asserts that the petitioner was overpaid \$7,016 in BCP from November 2011 – March 31, 2014 (claims # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED]). The cause of the overpayment was identified as client error – failure to report Mr. [REDACTED] in the household.

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, 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, plus any premiums that would have been owed. *BCPEH*, §28.1 – 28.2. The petitioner does not challenge the accuracy of the BCP charges or the arithmetic of the agency's overpayment calculation here, with one exception. She asserted at hearing that she did not receive BCP coverage throughout the overpayment period. The agency reviewed its computer records and found that the petitioner was continuously on BCP from October 2010 through March 2014.

In this case, the agency asserts that the petitioner falsely reported the father of her children out of her household in October 2011. Even if he briefly left, the petitioner then failed to report his return. The BCP statute requires the recipient to report changes that might affect eligibility. Wis. Stat. §49.471(6)(h). See in accord, *BCPEH*, §27.2. The combination of the father's income plus the petitioner's income, caused her income to be above 200% of the federal poverty level (FPL) for the overpayment months. When her income exceeded 200% FPL, she was not eligible for benefits. Wis. Stat. §49.471(4)(a).

The petitioner's argument is that, while she undisputedly resided in a house owned by Mr. [REDACTED], Mr. [REDACTED] resided in a house *owned by the petitioner* at [REDACTED], [REDACTED]. The agency interviewed and obtained written statements from neighbors at the [REDACTED], [REDACTED] address who stated that Mr. [REDACTED] has continuously lived at that address. He drives a truck registered to the [REDACTED], [REDACTED] address. His employment records list the [REDACTED], [REDACTED] address. The petitioner's hearing request states that the couple has separate finances (which is irrelevant), but that "[REDACTED] is in this home..."

At hearing, the petitioner testified that Mr. [REDACTED] was living at the residence owned by her at [REDACTED], [REDACTED]. This seems improbable. The petitioner produced no documentation or witnesses to place Mr. [REDACTED] as a resident of the [REDACTED] Street property during 2011 through March 2014. Based on the foregoing, I conclude that Mr. [REDACTED], the father of their child-in-common, resided with the petitioner from November 2011 through March 2014. The petitioner intentionally reported him as out of the household when he was not, and then failed to correct her misreporting until March 2014, when the agency had gotten wind of the lie. The agency may proceed with collection efforts.

CONCLUSIONS OF LAW

1. The petitioner falsely reported Mr. [REDACTED] as being out of her household in October 2011, resulting in the creation of a BCP overpayment.
2. The county agency correctly determined that the petitioner was overpaid \$7,016 MA/BCP fees during the November 2011 through March 2014 period.

THEREFORE, it is

ORDERED

That 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 12th day of September, 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 September 15, 2014.

[REDACTED] County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability