



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/158082

PRELIMINARY RECITALS

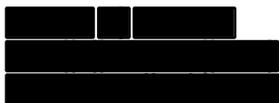
Pursuant to a petition filed June 3, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on July 9, 2014, by telephone.

The issue for determination is whether the petitioner was overpaid MA or BCP from August 2013 through May 31, 2014.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Kristine DeBlare, IRS/PARIS agent
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. The petitioner's household was certified for BCP from at least August 2013 through May 2014. During that period, she claimed that her nephew,   (CL), age 12, was residing

with her in Milwaukee, Wisconsin. His presence in her household created a BCP household size of two persons.

3. CL's mother, [REDACTED] began claiming him as a member of her household in [REDACTED] in July 2013. Duplicate FoodShare benefits were issued for CL by both [REDACTED] and Wisconsin from September 2013 onward.
4. CL resided with the petitioner from September into November 2013. He did not reside with the petitioner in December 2013, or for January through early May 2014.
5. On May 12, 2014, the Department issued *MA/BC/BCP Overpayment Notice(s)* to the petitioner. The *Notice* advised that the petitioner had been overpaid BCP totaling \$2,506.81 for the August 1, 2013 through May 31, 2014 period. The stated basis for overpayment was "client error- failure to report accurate household members."

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. *Id.*, § 28.2 *et seq.*

In this case, the agency began by asserting that CL was not living with the petitioner throughout the August 2013 through May 2014 period. It formed this opinion because (1) the child was being claimed by his mother on an [REDACTED] FS case throughout the period, and (2) after the Department gave the petitioner an opportunity in April 2014 to submit proof of the child's whereabouts, she submitted nothing. The agency then came up with the overpayment amount.

At hearing, the petitioner provided verification that CL was enrolled in a Milwaukee school from September through November 2013. From hearing, testimony, it emerged that CL lived with her from August into November 2013, and was then taken away by his mother. He remained away until a return visit in February 2014, followed by a resumption of residence with his mother. The child next returned to living with his aunt/petitioner during May 2014.

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. Stat. §49.471(6)(h). See in accord, *BCPEH*, §27.2. Thus, the existence of the timely reporting requirement is clear. The petitioner obviously was not accurate in reporting CL's whereabouts to the Department.

II. THE 8/1/13 – 5/31/14 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's income is in dispute. Rather, the petitioner initially explained that her nephew was residing with her throughout the overpayment period, subject to a few brief appearances by his mother.

CL was present at hearing and testified that he lived with the petitioner in Wisconsin from mid-August into November 2013, but then lived with his mother from December 2013 into May 2013. Post-hearing, the petitioner supplied verification of CL's school attendance in Milwaukee from September through November 2013. This evidence caused me to apportion the child's residency as stated in Finding #4. There is no indication that CL's mother had an open MA case for him in another state in May 2014.

After finally hearing some corroborative evidence from the petitioner, the Department correctly amended its position after the hearing. Specifically, it dropped that portion of the BCP claim for August 2013 through December 2013. If the petitioner had reported CL's departure at the end of November, the Department would have discontinued BCP effective December 31, 2013, so the overpayment began January 1, 2014. BCP paid for May 2014 was also not an overpayment because CL had returned to living with the petitioner in that month (and MA was apparently *not* open for him in [REDACTED]). I will order reduction of the BCP claim amount by removal of the amounts attributable to August through December 2013, and May 2014, from the recoverable overpayment amount.

CONCLUSIONS OF LAW

1. The petitioner was overpaid BCP from January 2014 through April 30, 2014, due to client error.
2. The petitioner was not overpaid BCP from August 1, 2013 through December 30, 2013.
3. The petitioner was not overpaid BCP for May 2014.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the Department to remove BCP benefit costs from the petitioner's overpayment determination for the months of August 2013 through December 2013, and the month of May 2014. 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 29th 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 29, 2014.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability