



FH
5121335351

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Heidi L. Bagniefski
550 S Huron Road #65
Green Bay, WI 54311

AMENDED DECISION

MOP/158275

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance, a hearing was held on July 16, 2014, at Green Bay, Wisconsin.

The issue for determination is whether this ALJ as jurisdiction to address an overpayment of Medical Assistance previously decided by ALJ Gagnon on March 18, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Heidi L. Bagniefski
550 S Huron Road #65
Green Bay, WI 54311

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Donna Agamaite
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

Reason for Amended Decision: Petitioner had two separate appeals heard during the same hearing. One appeal was for a FoodShare overpayment. The other appeal was for a BadgerCare Plus overpayment. The decision that was released yesterday should have been released under the FoodShare or FOP case number and not this case number. It was a clerical error by the ALJ, which I have now corrected. Although these decisions are not identical, the jurisdictional issues are the same and some of the discussion is identical.

FINDINGS OF FACT

1. Petitioner (CARES # 5121335351) is a resident of Brown County.
2. ALJ Nancy Gagnon determined that Petitioner was overpaid \$38,863.50 in BadgerCare Plus fees in her decision dated March 18, 2014. (Exhibit 2).
3. ALJ Nancy Gagnon determined that Petitioner was overpaid \$20,524 in FoodShare (FS) benefits in a decision dated February 9, 2014. (Exhibit 3).
4. Following ALJ Gagnon's decisions Petitioner entered into a voluntary payment agreement of \$20 per month for the BadgerCare Plus overpayment.
5. On May 19, 2014 the agency sent Petitioner a Notice of Decision stating that her FoodShare (FS) benefits would decrease from \$406 to \$326 due to an overpayment recoupment. (Exhibit 1).
6. On June 13, 2014 Petitioner requested a fair hearing. In her request for fair hearing Petitioner challenged the underlying overpayment case decided by ALJ Gagnon. Petitioner stated that Frank Bagniefski was charged with fraud in a criminal case. Frank was sentenced to 19 years in prison and is ordered to pay the full amount back to the state through restitution in his criminal case. As a single mother she said that she cannot afford to pay back the BC overpayment nor to have her FS reduced. She further stated that she did not know about Frank's illegal activities that ultimately caused these overpayments. (Exhibit 4).
7. Petitioner's defense in the underlying overpayment cases decided by ALJ Gagnon was that she did not know about Frank's illegal activities that caused the overpayments. ALJ Gagnon decided that Petitioner was a part of the household, and therefore legally responsible for the overpayments in her two previous decisions. (Exhibit 2 and Exhibit 3).

DISCUSSION

Claim preclusion (formerly known as *res judicata*) requires a final judgment on the merits in a prior proceeding. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Id.*

Petitioner has had her opportunity to contest the overpayment. That opportunity was at her fair hearing in front of ALJ Gagnon on January 28, 2014. She contested the overpayments from BadgerCare Plus and FoodShares. Following the hearing ALJ Gagnon issued two final decisions concluding that Petitioner was overpaid \$20,524 in FoodShare benefits and \$38,863.50 in BadgerCare Plus fees. I do not have the authority to revisit that decision based upon Frank's conviction and the circuit ordering restitution in that case.

I would also not that the Department of Health Services is legally required to seek recovery of incorrect BadgerCare Plus payments when a recipient engages in a misstatement or omission of fact on a recovery of fact on a BadgerCare Plus application, or fails to report income information, which in turn gives rise to a BadgerCare Plus overpayment:

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.

(b) The department's right of recovery [] is limited to the amount of the benefits incorrectly granted.

Wis. Stat. §49.497(1). BadgerCare Plus is in the same subchapter as §49.497. See also the department's *BadgerCare Plus Eligibility Handbook (BCPEH)*, §28.1.

Although Frank was ordered to pay restitution, the department can only collect the total amount of the overpayment from Heidi, Frank, or a combination of the two. The department cannot collect more money than the amount of overpayment.

There was some confusion whether or not money was being recouped from Petitioner for the BadgerCare Plus overpayment. It appears that Petitioner is on a voluntary payment agreement with BadgerCare Plus. There is nothing in the BadgerCare Plus handbook that allows for recoupment of BadgerCare Plus overpayment through a reduction in benefits. *BCPEH*, §28.1 – 28.9, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (last viewed July 2014).

CONCLUSIONS OF LAW

The overpayment issue was already decided, and I am without jurisdiction to address that issue.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

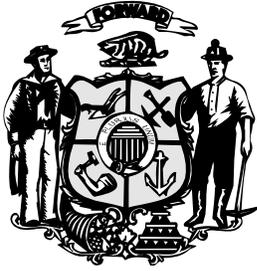
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of August, 2014

\sCorinne Balter
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 August 4, 2014.

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