FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/158408

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on July 16, 2014, at Madison, Wisconsin. At the request of the parties, the record was held open until July 30, 2014 for the county agency's initial closing argument, by August 18, 2014 for the petitioners' response, and for the agency's reply by August 28, 2014. The record was further held open until October 29, 2014 for the submission of an October 23, 2014 county agency clarification letter regarding the BC overpayment reduction and re-calculation to DHA and to petitioner, with an opportunity for a response by petitioners to DHA by October 29, 2014. The petitioners did not submit any response by October 29, 2014 or even by the date of this decision.

Both petitioners, [redacted] (MA casehead) and [redacted], agreed to the consolidation of their MA and FS cases into one hearing on July 16, 2014 for Case Nos. FOP/158407, FOP/158409, MOP/158408, and MOP/158410.

The issue for determination is whether the county agency is correctly seeking to recover from petitioner a reduced BadgerCare (BC) overpayment of $3,906 from the period of March 1, 2013 to March 31, 2014, due to petitioner's failure to timely and fully report his earned income and his fiancé's ([redacted])'s earned income resulting in resulting in unpaid BC premiums under a 12 month BC Plus extension (or the BC benefits paid out that month) during the entire overpayment period and an unpaid BC premium for their one child.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Monica Johnson, overpayment specialist

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Dane County who resides with his fiancé, [redacted]. Petitioner resides with his two children, and one of those children is in common with Ms. [redacted].
2. The petitioner received BadgerCare (BC) Plus benefits during the period of March 1, 2013 to March 31, 2014 for a BC household of four.
3. The petitioner failed to report an increase in earned income when the BC household exceeded the FPL reporting threshold of $2,069 in January, 2013 and again in June, 2013. Exhibit A1-2.
4. The petitioner's household's income was above the income reporting requirement of $2,069 during the entire period of March 1, 2013 to March 31, 2014 which required petitioner to report timely and fully his household's income which determined his BC income eligibility, capitation fees, and BC premiums during that entire period.
5. Petitioner received proper notification of income reporting rules in notices sent to petitioner dated October 25, 2012 and January 18, 2013, but failed to meet those reporting requirements.
6. The petitioner was employed as a [redacted] at [redacted].
7. [redacted] was employed as an [redacted] at [redacted].
8. Petitioner and Ms. [redacted]'s combined income exceeded the reporting requirement of $2,069 during January, 2013, and were required to report their income by February 10, 2013 (which affected benefits as of March 1, 2013). See Exhibits E1-10 and A1-2.
9. Petitioner failed to report his employment at [redacted] or Ms. [redacted]'s employment at [redacted] until his April 11, 2013 renewal review.
10. Ms. [redacted] inaccurately verified her earned income to the county agency, and her earned actually was approximately twice as much income as indicated on her income verification. See Exhibits E9 and E11.
11. On June 6, 2013, petitioner reported to the county agency that his employment at [redacted] ended. Exhibit B. However, petitioner failed to report to the agency that he began new employment at [redacted] on June 24, 2013. Exhibit E3. Petitioner was required to report that new employment at [redacted] by July 10, 2013, but failed to do so. That new income from [redacted] affected household income during the period of August 1, 2013 through October 31, 2013.
12. During October, 2013, the county agency received SWICA State wage matches for the petitioner and Ms. [redacted]. The State wage match for petitioner for the first and second quarter of 2013 confirmed the under-reporting by petitioner and his failure to report his new job at [redacted]. Exhibits B The State wage match for [redacted] for the first, second, and third quarters confirmed Ms. [redacted] only reporting about half of her actual earned income. Exhibit B.

13. The gross household income (petitioner and Ms. [redacted]) was the following during the BC overpayment period: a) March, 2013 - $4,018; b) April, 2013 - $4,197.25; c) May, 2013 - $5,648; d) June, 2013 - $5,169.50; e) July, 2013 - $6,389.25; f) August, 2013 - $5,615.50; g) September, 2013 - $16,963.44; h) October, 2013 - $10,166.66; i) November, 2013 - $11,651.76; j) December, 2013 - $10,023.64; k) January, 2014 - $13,078.66; l) February, 2014 - $8,319.90; and m) March, 2014 - $11,426.50. See Exhibit O.

14. The petitioner's household's income was above the BC income eligibility of $3,925 for a household of four for the BC overpayment period of March, 2013 through February 1, 2014 (and that BC income limit increased to $3,975 as of February 1, 2014. See Exhibit L.

15. The petitioner received BC benefits for her household of four during the time period of March 1, 2013 to March 31, 2014.

16. The petitioner's household's income was higher than he reported resulting in unpaid BC premiums for petitioner's child, KO, during the overpayment period.

17. The county agency sent May 6, 2014 BadgerCare Plus Overpayment Notices to the petitioner and to [redacted] [redacted] which indicated that petitioner and Ms. [redacted] received a total overpayment of BadgerCare benefits in the amount of $5,029 during the period of March 1, 2013 to March 31, 2014, due to petitioner's failure to timely and fully report his earned income and his fiancé's ([redacted])'s earned income resulting in household income above the BC income eligibility limit for a household of four during the entire overpayment period and unpaid BC premiums for their one child.

18. The $5,029 total BC overpayment was composed of $3,972 for BC payments for the two adults (petitioner and [redacted]) for which they were both income ineligible, and $1,057 in unpaid BC premiums for their one child, KO (prior to the county re-determination that the petitioners were eligible for the BC 12 months extension).

19. The BC Plus premium threshold for the period of February 1, 2013 through January 31, 2014 was 133% FPL or $2,610.13 for a household of four (and increased the BC premium to $2,643.38 as of February 1, 2014).

20. In its written submissions and recalculation of the petitioner's BC overpayments after the hearing, the county agency representative stipulated to the following regarding the **reduction of petitioner's BC overpayment from $5,029 to $3,906**: a) the county agency determined that both petitioners met all the criteria for a 12 month BC+ extension due to an increase in earnings per BadgerCare Handbook, 18.2; b) the 12 month extension (from March 1, 2013 to February 28, 2014) removes the automatic complete overpayment due to household income above the BC income eligibility limit; c) the petitioners' BC overpayment will instead be the amount of the BC premiums due or the benefits paid per month (whichever is less for the period of March 1, 2013 through February 28, 2014) which in this case is the BC premium due while in the extensions period of $3,843.22; d) the 12 month extension ended as of March 1, 2014, and thus the petitioners do have a regular BC overpayment of $261.32 for that month of March, 2014; e) the $3,906 reduced overpayment amount is composed of $3,843.22 for petitioner and Ms. [redacted] as BC Plus adult overpayments under the 12 month extension, and only $63.11 as an overpayment for the one child's BC premium. See Exhibit O and October 23, 2014 letter by county agency overpayment specialist Monica Johnson.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (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.wi.gov/bcplus/ :

> **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.**

(Emphasis added).

> **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.

...

2. Fraud. ...

BCPEH, §28.1 – 28.2.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

22.2.2.5 Determining Liable Individual

Except for minors, **collect overpayments from the Medicaid member**, even if the member has authorized a representative to complete the application or review for him/her.

Example 8: Sofie applied for Medicaid in December, and at that time designated her daughter, Lynn, as her authorized representative. Lynn did not report some of her mother's assets when she applied, which would have resulted in Sofie being ineligible for Medicaid. Sofie was determined to be ineligible for Medicaid from December through March. Recover from Sofie for any benefits that were provided to her from December through March.

If a *minor* received Medicaid in error, make the claim against the minor's parent(s) or legally responsible relative if the parent or legally responsible relative was living with the minor at the time of the overpayment.

Therefore, the county agency is correctly seeking recovery of the BC overpayment not only from [redacted], but also from his fiancé, [redacted], based upon joint and several liability for the household's BC overpayment.

During the July 16, 2014 hearing and in its August 23, 2014 closing argument, the county agency representative, Monica Johnson, presented convincing testimony and evidence that the petitioner and [redacted] failed to report all the their earned income from their employers to the county agency. While the record was held open, county overpayment specialist Monica Johnson provided a detailed closing argument with detailed exhibits to establish that the county agency was correctly pursuing a BC overpayment against petitioner and Ms. [redacted].

During October, 2013, the county agency received SWICA State wage matches for the petitioner and Ms. [redacted]. The State wage match for petitioner for the first and second quarter of 2013 confirmed the under-reporting by petitioner and his failure to report his new job at [redacted]. Exhibits B The State wage match for [redacted] for the first, second, and third quarters confirmed Ms. [redacted] only reporting about half of her actual earned income. Exhibit B. As a result, the full earned income of petitioner and Ms. [redacted] was not budgeted as income to the BC household in determining the petitioner's BC household eligibility and BC child premiums. The county agency established that petitioner's gross household income was above the BC income eligibility limit of $3,925 for a household

of four for the BC overpayment period. Neither the petitioner nor Ms. [redacted] contested that they had received BC benefits during the period of the BC overpayment period.

This Administrative Law Judge (ALJ) wanted to provide every opportunity for both the county agency and the petitioner to provide clear, reliable documentation regarding the petitioners' failure to report household income, and the accurate amount of the petitioner's household income during the overpayment period in question. Thus, the record was held open for the submission of the county agency's closing argument with attachments, and then for the petitioner to submit a responsive closing argument with possible attachments as to why the alleged BC overpayment was inaccurate or incorrect.

Ms. [redacted] sent an August 13, 2014 closing argument to DHA which basically argued the overpayment was not her fault because the notices and other documents had been sent to petitioner, as the BC case head. She argued that she was unaware of the reporting requirements or what the petitioner had reported as her income to the county agency. However, such argument must fail, due to her joint and several liability (which is explained above). As a result, all adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. Therefore, the county agency is correctly seeking recovery of the BC overpayment not only from [redacted], but also from his fiancé, [redacted], based upon joint and several liability for the household's BC overpayment.

In his August 13, 2014 closing argument and attachments, Mr. [redacted] provided various unconvincing excuses and allegations for why the overpayment was not his fault or was incorrect. He also attempted to refute the county agency's case but was unpersuasive. He was unable to provide any reliable evidence to refute the evidence established by the county agency regarding the BC overpayment during the period in question. The petitioner and Ms. [redacted] basically argued that it was unfair that the county agency was seeking recovery of the overpayment. However, nor petitioner nor Ms. [redacted] were unable to provide any reliable evidence to refute the county agency's substantial overpayment case, as documented in the above Findings of Fact.

Further, the county representative explained that petitioner was notified of his responsibility to accurately and timely report all of his household's income information and any **changes** to household income, as he did sign a "Notice of Responsibility." Petitioner was also unable to establish any error in the county's calculation of his BC overpayment, or that he had made any payments towards that overpayment.

The BadgerCare Plus Handbook provides that BC members must report their full income and changes to that income when their total monthly gross income exceeds the percentages of the Federal Poverty Limit (FPL) for their group size by the 10th of the month following the month in which total income exceeds the previous threshold. BadgerCare Plus Handbook, section 27.3, "Income Change Report."

Based upon the answers during the hearing and in the detailed itemization of his overpayment provided by the county, the petitioner was provided an explanation of his BadgerCare overpayment. The petitioner was unable to establish with any specificity any error on the part of the county agency in concluding that his household income was above the income limit during the overpayment period or that he had improperly received MA payments on behalf of himself due to his household's income ineligibility or unpaid BC premiums. During the hearing, petitioner's testimony was simply not credible that he had fully reported to the county agency his full household income.

However, as explained in detail in Finding of Fact #20 above, the county agency re-determined and re-calculated the petitioners' BC overpayment based upon concluding that the petitioners were eligible for a 12 month BC extension which considerably reduced their BC overpayment amount. County representative Monica Johnson is commended for her detailed and articulate October 23, 2014 written

explanation of the recalculation of the BC overpayment. See Finding of Fact #20 above. While the record was further held open until October 29, 2014 for any response by either petitioner, neither petitioner offered any written evidence or reliable argument to refute the accuracy of the county's BC reduced overpayment calculation of $3,906 for the BC overpayment period. Accordingly, based upon the entire hearing record, I conclude that the county agency is correctly seeking to recover from petitioner a reduced BadgerCare (BC) overpayment of $3,906 from the period of March 1, 2013 to March 31, 2014, due to petitioner's failure to timely and fully report his earned income and his fiancé's ([redacted])'s earned income resulting in unpaid BC premiums under a 12 month BC Plus extension (or the BC benefits paid that month) during the entire overpayment period and an unpaid BC premium for their one child.

CONCLUSIONS OF LAW

The county agency is correctly seeking to recover from petitioner a reduced BadgerCare (BC) overpayment of $3,906 from the period of March 1, 2013 to March 31, 2014, due to petitioner's failure to timely and fully report his earned income and his fiancé's ([redacted])'s earned income resulting in unpaid BC premiums under a 12 month BC Plus extension (or the BC benefits paid out that month) during the entire overpayment period and an unpaid BC premium for their one child.

THEREFORE, it is **ORDERED**

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 3rd day of November, 2014

\sGary M. Wolkstein
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 November 3, 2014.

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