FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/158797

PRELIMINARY RECITALS

Pursuant to a petition filed July 7, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Department of Health Services - Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on July 21, 2014, by telephone.

The issue for determination is whether the petitioner is liable to the Department for MA benefits paid out for May 2014.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

[redacted] -

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner attempted to apply for MA through the federal insurance Marketplace in November 2013. The Marketplace forwarded the application to Wisconsin for processing. On

March 11, 2014, the Wisconsin Department of Health Services issued a written notice to the petitioner advising that she was eligible for a form of MA, BadgerCare Plus, effective April 1, 2014. *See*, Exhibit 4A, Notice.

3. The petitioner is not a U.S. citizen. She legally entered the U.S. on April 9, 2010. Because she is a non-citizen who has not been legally present for at least five years, the petitioner should not have been certified for any form of MA, including BadgerCare Plus (BCP). *See*, *Medicaid Eligibility Handbook*, § 7.3.1.1.

4. The Department realized the eligibility error in March 2014, after receiving verification of the petitioner's U.S. entry date. On March 24, 2014, the Department issued written notice to the petitioner advising that her BCP would be discontinued May 1, 2014. The basis for discontinuance was lack of citizenship or lack of sufficient legal residential longevity. *See*, Exhibit 4B.

5. The petitioner filed a hearing request with this Division to contest the closure on April 7, 2014 (DHA case no. 156648). She requested that her BCP be continued pending appeal. This Division promptly directed the Department to continue the petitioner's BCP from May 1, 2014, through the date of a hearing decision.

6. The petitioner obtained private health insurance through Anthem, eliminating the need for BCP for May 2014 onward.

7. On April 30, 2014, the petitioner withdrew her hearing request for case #156648. This Division issued a Decision/Order for case #156648 on April 30, 2014, dismissing the case.

8. The Department did not end the BCP certification effective April 30, 2014.

9. On approximately May 23, 2014, the petitioner was in an automobile accident. She was transported by ambulance to a hospital for treatment. She did not present her BCP card to the ambulance provider or to the pharmacy that she used thereafter. Nonetheless, these providers somehow decided to bill the MA/BCP program for service charges.

10. On approximately July 2, 2014, the Department issued a *Wisconsin Medicaid and BadgerCare Plus Overpayment Notice* to the petitioner, advising that she had been overpaid $15,611.00 in BCP benefits during the month of May 2014 (claim #[redacted]). The petitioner appealed.

11. In preparation for hearing, the Department realized that it had erred in its overpayment computation. Claim #[redacted] was rescinded on July 16. In its place, a smaller claim (#[redacted]) was entered for May 2014. On July 16, 2014, the Department issued a *Wisconsin Medicaid and BadgerCare Plus Overpayment Notice* to the petitioner, advising that she had been overpaid $368.00 in BCP benefits during the month of May 2014.

12. The alleged $368.00 overpayment includes City of [redacted] ambulance charges totaling $233.29. The remaining $134.97 was for pharmacy claims from May 29, 2014.

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 pertinent nonfinancial or income information thereafter, which in turn gives rise to a BCP overpayment. See, Wis. Stat. § 49.497(1). *See* also, *BCP Eligibility Handbook (BCPEH)*, §28.1, online at http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm. The petitioner has done none of the above misdeeds.

However, there is another way in which a person can incur an overpayment -- asking for aid continuation pending appeal, and then receiving a decision that is not in the person's favor:

> **(5)** APPEAL.
>
> **(a)** Any person whose application for medical assistance is denied ... or who believes that ... his or her eligibility has not been properly determined may file an appeal with the department ...
>
> **(b)** ...
>
> **2.** If a recipient requests a hearing within the timely notice period specified in 42 CFR 431.231 (c), medical assistance coverage shall not be suspended, reduced, or discontinued until a decision is rendered after the hearing but medical assistance payments made pending the hearing decision may be recovered by the department if the contested decision or failure to act is upheld. ...

Wis. Stat. § 49.45(5)(a)-(b); *see* also, 42 C.F.R. § 431.230(b).

In this case, there was no hearing, but the decision was rendered on April 30, 2014. Medical assistance/BCP certifications are done in one-month periods, ending on the last day of a month. Wis. Admin. Code § DHS 103.09(1). Thus, there was no basis for certifying (or keeping in place the certification of) the petitioner for the month of May 2014. There is also no basis for recovery because the disputed payments here were not "payments made pending the hearing decision." The hearing decision had already been issued during the previous month (April).

Thus, I conclude that the Department cannot recover from the petitioner the $368.00 in charges paid by MA for services furnished in May 2014. Per Wis. Admin. Code § DHS 106.04(5)(a), it is possible that the Department may seek a return of the $368 from the medical providers, particularly in light of the petitioner's representative's testimony that the petitioner did not present an MA/BCP card to the providers when she received the May services. *See*, transcript at 18 minutes, 10 seconds, through 19 minutes, 3 seconds. However, that recovery decision is beyond the scope of the appeal before me.

CONCLUSIONS OF LAW

1. The Department has rescinded overpayment claim #[redacted] for $15,611.00 in BCP charges incurred in May 2014.
2. The Department may not collect overpayment claim #[redacted] from the petitioner for BCP charges incurred in May 2014.

THEREFORE, it is **ORDERED**

That the petition is *remanded* to the agency with instructions to cease collection efforts against the petitioner on overpayment claim #[redacted]. This action shall be taken within 10 days of the date of this Decision.

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 24th 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 24, 2014.

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Public Assistance Collection Unit
Division of Health Care Access and Accountability
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