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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/159618

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 06, 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 September 04, 2014, at Mauston, Wisconsin. At the request of the parties, the record was held open for consecutive closing arguments by the parties to the Division of Hearings and Appeals (DHA). The county representative timely submitted her argument to DHA by September 11, 2014. However, the petitioner failed to submit her responsive closing argument to DHA by September 18, 2014, or even by the date of this decision.

The issue for determination is whether the county agency is correctly seeking recovery of IRIS/Waiver MA and QMB overpayments in the total amount of \$1,578.58 to the petitioner during the period of December 1, 2013 to March 31, 2014, due to petitioner's failure to timely report her new employment and income resulting in income above the QMB income eligibility limits and unpaid cost shares for IRIS/Waiver MA benefits for an MA household of one.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Megan Thurston, ESS  
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 disabled resident of Juneau County.
2. On September 27, 2012, petitioner signed her MA application which included her rights and responsibilities.
3. The petitioner receives QMB and IRIS/Waiver MA benefits for the period of December, 2013 through March, 2014 for a household of one.
4. The county agency sent notices to the petitioner on August 26, 2013, August 27, 2013, September 9, 2013, and December 9, 2013. All of those notices explained to the petitioner her "10 day reporting requirement" requiring her to timely report her changes in her employment and income to the county agency.
5. Petitioner failed to timely report her new employment at [REDACTED], which began October 27, 2013. The petitioner was required to report that new employment within 10 days (by November 6, 2013) which affected her December, 2013 QMB and MA eligibility and benefits (including cost share).
6. The petitioner's job at [REDACTED] ended during March, 2014.
7. The county agency discovered petitioner's new employment through a SWICA wage match on April 29, 2014 which indicated that petitioner had employment in the third and fourth quarters of 2013, but failed to report that employment or income to the county agency.
8. The petitioner received average monthly earned income of \$559.50 from [REDACTED] during the MA overpayment period. She also received the following Social Security Disability Income (SSDI) unearned income: a) December, 2013 - \$972; b) January, 2014 - \$987; c) February, 2014 - \$987; and d) March, 2014 - \$987.
9. If petitioner had timely reported her new employment and income, then her household income would have been above QMB income eligibility limits for each of the months of December, 2013 through February, 2014 (QMB income limit of \$957.50 for December, 2013 and January, 2014, and increased income limit of \$972.50 as of February, 2014).
10. The county agency sent a July 30, 2014 IRIS/Waiver MA and QMB Overpayment Notice to the petitioner stating that she received a total overpayment of \$1,578.58 during the period of December, 2013 through March, 2014, due to her failure to timely report her new employment and income to the county agency.
11. The petitioner's IRIS/Waiver overpayment portion was \$1,263.88 which was composed of the cost share that petitioner should have paid, if she had timely reported her income from [REDACTED]: a) December, 2013 - \$371; b) January, 2014 - \$355; c) February, 2014 - \$404.63; and d) March, 2014 - \$133.25.
12. The petitioner's QMB portion of the overpayment was \$314.70 which was composed of the incorrectly paid Medicare Part B Premium of \$104.90 for the months of December, 2013, January and February, 2014, due to petitioner's income above the QMB income limit for December, 2013 through February, 2014.
13. The county agency's IRIS/Waiver MA and QMB overpayment budget screens confirm the correct calculation of petitioner's IRIS/Waiver MA and QMB overpayments to be a total overpayment of \$1,578.58.

## 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.

The Medicaid Eligibility Handbook provides in pertinent part:

Clients  **must report to the Income Maintenance agency, within ten days of the occurrence, a change in address, income, assets, need, medical expenses or living arrangements which may affect eligibility.**

(Emphasis added).

MEH 12.1, "Change Reporting Introduction."

During the September 4, 2014 hearing, the county agency representative, ESS Meagan Thurston, presented a well-organized case, and established that the petitioner failed to timely report to the county agency her new employment and income to the county agency. The new employment and income was only discovered through a SWICA wage match. As a result, petitioner's employment income was not budgeted as income to the MA household in determining the petitioner's QMB household income eligibility and IRIS/Waiver MA cost share for the months of December, 2013 through March, 2014. The county agency established that petitioner's household income was above the QMB income limit as stated in Finding of Fact #9 above. The petitioner did not contest that she had received QMB and IRIS/Waiver MA benefits during the December, 2013 through March, 2014 period. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's total overpayment determination of \$1,578.58 for that overpayment period.

During the hearing, petitioner explained that she was confused about benefits from the county agency, Social Security (SSDI), DDB, and DVR and their reporting requirements. She alleged that she thought her only reporting requirement was to DDB or Social security. However, as explained by the county agency, petitioner was fully notified of the reporting requesting by receiving five separate notices from the county agency informing her of the 10 day reporting requirement regarding changes in her employment and income. See Findings of Fact #4 and #5 above.

During the hearing, petitioner explained that she did not recall that she was required to report her new employment and income to the agency within 10 days of the income change. As a result, petitioner generally contended that it was unfair that the county agency was seeking recovery of the overpayment. However, as indicated by the above MA policy (MEH 12.1), petitioner was required to report her new

employment and income by November 6, 2013, but failed to do so. Based upon the above, I must conclude that the county agency is correctly seeking recovery of IRIS/Waiver MA and QMB overpayments in the total amount of \$1,578.58 to the petitioner during the period of December 1, 2013 to March 31, 2014, due to petitioner's failure to timely report her new employment and income resulting in income above the QMB income eligibility limits and unpaid cost share for IRIS/Waiver MA benefits for an MA household of one.

### **CONCLUSIONS OF LAW**

The county agency is correctly seeking recovery of IRIS/Waiver MA and QMB overpayments in the total amount of \$1,578.58 to the petitioner during the period of December 1, 2013 to March 31, 2014, due to petitioner's failure to timely report her new employment and income resulting in income above the QMB income eligibility limits and unpaid cost share for IRIS/Waiver MA benefits for an MA household of one.

**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 24th day of November, 2014

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\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 24, 2014.

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