



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/159666

PRELIMINARY RECITALS

Pursuant to a petition filed August 05, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Portage County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on September 04, 2014, at Stevens Point, Wisconsin.

The issue for determination is whether the county agency is correctly seeking a Medicaid Purchase Plan (MAPP) overpayment in the amount of \$275 for the month of July, 2013, due to petitioner's failure to timely report his increased employment and income which resulted in an unpaid MAPP premium due of \$275 for that month.

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: Kyle Patterson, ESS
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.
2. The petitioner receives Medicaid Purchase Plan (MAPP) benefits for a household of one.

3. On May 3, 2013, the county agency sent a Medicaid Purchase Plan (MAPP) notice to the petitioner indicating that he was required to report within 10 days if there was a change in his income. That requirement is based upon the Medicaid Eligibility Handbook sec. 26.7.1, "MAPP Changes Introduction."
4. On May 19, 2013, petitioner started working at [REDACTED]. This new employment and income was required to be reported to the county agency by May 29, 2014 (which affected his July, 2013 MAPP eligibility and premium).
5. Petitioner failed to report to the county agency his May 19, 2013 as a [REDACTED] acreage counter until June 17, 2013. See Exhibit 5.
6. The county agency issued to petitioner's MAPP benefits for the month of July, 2013 without any MA premium due.
7. If petitioner had timely reported his new employment and his gross income of \$1,919.40, then his household income would have required payment of a MAPP premium of \$275 for the month of July, 2013.
8. The county agency sent a July 29, 2014 MAPP Overpayment Notice to the petitioner stating that he received a \$275 overpayment for the month of July, 2013, due to his failure to timely report that his increased gross income to the county agency by May 29, 2013.
9. The county agency's MAPP overpayment budget screens confirms that petitioner's income was above MAPP 150% FPL premium test of \$1,436.25 for a household of one for the month of July, 2013, and thus petitioner was required to pay a \$275 BC premium for that month.

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:

The member  **must report within ten days all changes to income**, household composition, allowable deductions and other non-financial changes, including loss of employment, which affect eligibility. The IM worker should re-determine eligibility as a result of the changes. If it is determined that s/he remains eligible for MAPP  and owes a premium, recalculate the premium amount

(Emphasis added).

MEH 26.7.1, “MAPP Changes Introduction.”

During the September 4, 2014 hearing, the county agency representatives, ESS Kyle Patterson, presented a well-organized case, and established that the petitioner failed to timely report to the county agency his new employment and income to the county agency by May 29, 2013. As a result, petitioner's employment income was not budgeted as income to the MAPP household in determining the petitioner's MAPP premium due for the month of July, 2013. The county agency established that petitioner's household income was above the MAPP premium income limit, and that petitioner did not timely report by May 29, 2013 he had begun working at [REDACTED] on May 19, 2013. The petitioner gross income for July, 2013 was \$1,919.40 and if timely reported would have resulted in eligibility for MAPP but with a \$275 MAPP premium. The petitioner did not contest that he had received MAPP benefits during July, 2013. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's MAPP premium overpayment determination of \$275 for that overpayment period.

During the hearing, petitioner explained that he did not recall that he was required to report his 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 MAPP policy (MEH 26.7.1), petitioner was required to report his new employment and income by May 29, 2013, but failed to do so. Based upon the above, I must conclude that the county agency is correctly seeking a Medicaid Purchase Plan (MAPP) overpayment in the amount of \$275 for the month of July, 2013, due to petitioner's failure to timely report his increased employment and income which resulted in an unpaid MAPP premium due of \$275 for July, 2013.

CONCLUSIONS OF LAW

The county agency is correctly seeking a Medicaid Purchase Plan (MAPP) overpayment in the amount of \$275 for the month of July, 2013, due to petitioner's failure to timely report his increased employment and income which resulted in an unpaid MAPP premium due of \$275 for the month of July, 2013.

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.

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