



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/159723

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 07, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on September 16, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of medical assistance.

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: Aaron Borreson

Eau Claire County Department of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The county agency seeks to recover \$1,137.79 in BadgerCare Plus provided to the petitioner's household from November 1, 2012, through July 31, 2013.

3. There are three person in the petitioner's household.
4. The county agency sent the petitioner notices on September 7, 2012, October 2, 2012, and January 10, 2013, that she must report if her household's income exceeded \$2,115.80. *Exhibits 1-3*. The agency also sent her a notice on April 26, 2013, that she must report if her household's income exceeded \$4,068.75. *Exhibit 4*. Her household income exceeded these amounts in each of the months she received a notice.
5. The petitioner's household income was \$2,412.02 in November 2012, \$2,549.48 in December 2012, \$5,292.79 in January 2013, \$2,920.93 in February 2013, \$2,345.41 in March 2013, \$2,713.81 in April 2013, \$4,161.54 in May 2013, \$4,0152.45 in July 2013, and \$5,206.54 in July 2013.
6. Two hundred percent of the federal poverty level was \$2,115.80 during the period in question. *BadgerCare Plus Handbook*, § 50.1.
7. The petitioner's husband was not working when he began receiving BadgerCare Plus in September 2012. He began working in October 2012 and continued working every month during the period in question.

### DISCUSSION

The county agency seeks to recover \$1,137.79 in BadgerCare Plus benefits provided to the petitioner and her family from November 1, 2012, through July 31, 2013, because it contends that she failed to report income that affected their benefits. BadgerCare Plus provides medical assistance to children under 19 and their parents. Wis. Admin. Code, § 49.471.

The department "may" recover any overpayment of medical assistance that occurs because 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 [BadgerCare].
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.

Wis. Stat. § 49.497(1).

The petitioner's eligibility and premiums depended upon her household's income. *See* Wis. Stat. § 49.471(1)(f). During the period of the alleged overpayment, adults usually could not receive benefits if their household's income exceeded 200% of the federal poverty level. This limit generally did not apply to children. Wis. Stat. § 49.471(4)(a). As of July 1, 2012, adults in households with income that exceeded 133% of the federal poverty level had to pay a premium. (Before then, the income limit for premiums was 150% of the federal poverty level.) Premiums were not assessed for children until their income exceeded 200% of the federal poverty level. Wis. Stat. § 49.471(10)(b); *BadgerCare Plus Handbook*, 19.1.

All medical assistance recipients must report changes to the agency within 10 days. Wis. Admin. Code, § DHS § 104.02(6). Those receiving BadgerCare Plus had to report changes in income when the income reached any of the following levels:

- 100% FPL
- 133% FPL
- 150% FPL
- 185% FPL
- 200% FPL
- 250% FPL
- 300% FPL
- 350% FPL
- 400% FPL

*BadgerCare Plus Eligibility Handbook*, § 27.3.

When the petitioner first began receiving benefits in September 2012, her husband was unemployed, and she worked at a job that provided overtime. She also began receiving FoodShare then. The county agency notified her on September 7, 2012, October 2, 2012, and January 10, 2013, that she must report if her household's income exceeded \$2,115.80. *Exhibits 1-3*. The agency sent her a notice on April 26, 2013, that she must report if her household's income exceeded \$4,068.75. *Exhibit 4*. Her household income exceeded these amounts in each of the months she received a notice. She contends that her worker told her that she did not have to report overtime. I am skeptical of this assertion because it misstates a basic rule that a worker should know. But even if the petitioner's worker misinformed her about reporting overtime, it does not explain why she did not report a change of income when her husband returned working in October 2013. Because her income alone was around \$2,000 a month when her benefits began, she should have been aware that his income would cause the household to exceed the reporting limit, even without her overtime. If she had reported his return to work as soon as it affected her household's income, it would have affected her benefits no later than December 2012, and probably by November 2012, the month the agency began counting the overpayment. I am not going to eliminate the November 2012 overpayment because her failure to report her husband's change of income undermines the credibility of her contention that she was told that she did not have to report overtime. Furthermore, it is questionable whether an oral instruction would override a written one.

The agency based the amount of the overpayment on the petitioner's actual household income each month during this period, as is required by the *BadgerCare Plus Handbook*, § 28.4.2. In the months she still would have been eligible, it subtracted any premium she paid from the additional premiums she would have still been responsible for. In the months she should have been ineligible, it subtracted the premiums she paid from the capitation fee the program paid for her benefits. Thus, the overpayment was determined by subtracting the premiums she actually paid from the sum of the premiums she should have paid plus the capitation fees the Department should not have to have paid in the months she was ineligible. Finally, it added any medical payments the program made on her family's behalf in the months it determined she should have been ineligible. See *exhibit 6* for calculations. This method is consistent with the instructions in the *BadgerCare Plus Handbook*, § 28.4.2. The petitioner does not dispute that her household income exceeded the BadgerCare thresholds in months the agency determined it did. I have reviewed those calculations, and they are correct. Therefore, I will uphold its decision.

#### **CONCLUSIONS OF LAW**

The county agency correctly seeks to recover \$1,137.79 in BadgerCare Plus benefits provided to the petitioner and her family from November 1, 2012, through July 31, 2013, because she failed to report income that affected those benefits

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is 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 23rd day of September, 2014

---

\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 23, 2014.

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