



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/159731

PRELIMINARY RECITALS

Pursuant to a petition filed August 08, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on September 03, 2014, at Janesville, Wisconsin.

The issue for determination is whether the county agency is correctly seeking repayment of a BadgerCare (BC) overpayment of \$304.08 during the period of April 1, 2014 through June 30, 2014, due to the petitioner failing to timely report to the county agency that she was residing in [redacted] for those three months resulting in her BC non-financial ineligibility during that period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Melissa Genz, ES Supervisor
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 20 year old resident of Rock County who has two minor children.
2. The petitioner received BadgerCare (BC) benefits for a household of one during the period of April 1, 2014 through June, 2014.
3. The petitioner failed to timely report to the county agency that she moved out of state to [REDACTED] at the address of [REDACTED], [REDACTED] on or about March 17, 2014. See Exhibit 6.
4. On June 9, 2014, the Rock County Child Support agency discovered that petitioner has been residing in the State of [REDACTED] for the past three months, and her two children had been residing in Wisconsin with their grandparents or with their father.
5. The county agency paid BC capitation fees for the petitioner during the three month period of April through June, 2014.
6. The county agency sent July 16, 2014 and July 17, 2014 BadgerCare (BC) Overpayment Notices to the petitioner stating that she received an overpayment of \$304.08 during the period of April 1, 2014 to June 30, 2014 due to incorrectly paid capitation fees for the petitioner, due to her failure to timely report to the agency that she moved out of state to [REDACTED] for those three months resulting in her BC non-financial ineligibility during that period.

DISCUSSION

The Medicaid Eligibility Handbook provides the following regarding Residency:

6.1 Residency Eligibility

6.1.1 Residency Eligibility Introduction

A person must be a Wisconsin resident to be eligible for Medicaid. S/he must:

1. **Be physically present in Wisconsin.** There is no required length of time the person has to have been physically present, **and**
2. Express intent to reside here (See [6.2 Intent to Reside](#)).

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.

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.**

...

(Emphasis added).

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.

During the September 3, 2014 hearing, petitioner did not contest that she had received BC benefits during April through June, 2014 through the State of Wisconsin. Petitioner was unable to present any reliable evidence to refute or undermine the county's substantial testimony or evidence that petitioner resided in the State of ██████ during that three month period. The petitioner unconvincingly argued that she was only "on vacation" for those three months. The petitioner did not contest that she had received BC benefits for a group of one during the BC overpayment period of April 1, 2014 through June, 2014. Furthermore, the petitioner did not offer any reliable evidence to refute the accuracy of the county agency's MA overpayment determinations or calculations. Overall, the petitioner's credibility was questionable due to inconsistencies and contradictions in her testimony, and for the reasons explained above. Accordingly, for the above reasons, the county agency is correctly seeking repayment of a BadgerCare (BC) overpayment of \$304.08 during the period of April 1, 2014 through June 30, 2014, due to the petitioner failing to timely report to the county agency that she was residing in ██████ for those three months resulting in her BC non-financial ineligibility during that period.

CONCLUSIONS OF LAW

The county agency is correctly seeking repayment of a BadgerCare (BC) overpayment of \$304.08 during the period of April 1, 2014 through June 30, 2014, due to the petitioner failing to timely report to the county agency that she was residing in ██████ for those three months resulting in her BC non-financial ineligibility during that period.

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 6th 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 6, 2014.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability