



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/159793

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 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 (MA)/BadgerCare Plus (BCP), a hearing was held on September 10, 2014, at Madison, Wisconsin.

The issue for determination is whether the petitioner was overpaid BCP benefits from May 2010 through March 2014.

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: Monica Johnson, Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. BCP is a Wisconsin variant of Medical Assistance; prior to April 2014, it was only available for families with children and it featured higher income limits than “regular” MA. The petitioner’s BCP household of two persons (self and daughter) was certified for BCP from at least May 2010 through March 31, 2014. He was initially not required to pay a BCP premium as a condition of coverage due to the low reported income (under 133% FPL). A premium liability did begin in May 2012.
3. The petitioner’s income throughout the period is not in dispute.
4. In his online BCP application dated May 11, 2010, the petitioner included his daughter, CH, in his household and listed himself as her primary caretaker. During his May 19, 2010, telephone intake appointment, he stated that CH was placed with him three days weekly. During telephone reviews on March 23, 2011 and April 11, 2012, the petitioner did not report any changes to household membership status. In the review documents submitted by the petitioner on April 2, 2013 and March 21, 2014, the petitioner continued to list CH in his household, with himself as primary caretaker.
5. Per court order, the petitioner had placement of CH less than 37% of the time from June 2005, onward. An April 26, 2005 Dane County Circuit Order stated that the petitioner was to have placement of CH every Wednesday night, and three out of four weekends. A correcting Order was issued by the Court on June 8, 2005, specifying that the weekend placement would be every two out of three weekends. *See*, Exhibit D. If the petitioner had correctly reported the amount of his placement of CH, he would not have been eligible for BCP prior to April 2014.
6. When the Department recalculated BCP eligibility for May 2010 through March 2014, it determined that the household had been overpaid \$54,862.00 for the period. *Medicaid/BadgerCare Overpayment Notices* and worksheets were issued to the petitioner on July 14, 2014. The *Notices* advise that the petitioner was overpaid \$54,862.00 for the period (claims #6900409266, #7900409267, #9900409269, #0900409270), due to the recipient’s reporting error related to household composition.
7. Prior to April 1, 2014, an adult was subject to a BCP premium liability when the household’s income reaches 133% of the federal poverty level (FPL), and (unless self-employed) was not eligible for BCP *at all* when income exceeded 200% FPL.
8. The BCP program paid out medical charges for the petitioner that totaled \$57,018 during the overpayment period. From that amount, the Department subtracted the BCP premiums paid (\$2,156) by the petitioner to arrive at the \$54,862 overpayment liability amount.

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 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.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a "no eligibility" case, to base the overpayment determination on the actual MA/BCP charges paid (see 2nd paragraph below):

28.4.2 Overpayment Amount

Use the actual income that was reported or required to be reported in determining if an overpayment has occurred.

If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount.

If the case is still eligible for BC+ for the timeframe in question, but there was an increase in the premium, recover the difference between the premiums paid and the amount owed for each month in question.

BCPEH, § 28.4.2.

The petitioner asserted that he believed that he was accurately portraying himself as CH's primary caretaker because of a 2005 court order that states he is to have placement of the child every Wednesday, plus two weekends out of three (Saturday and Sunday). However, with that amount of placement he was not the primary caretaker of the child, and he did not hit the 40% placement threshold required to be BCP eligible prior to April 1, 2014. *BCPEH*, § 2.2.1. Thus, he was not eligible and was overpaid.

CONCLUSIONS OF LAW

1. The Department correctly determined that the petitioner was not eligible for BCP coverage from May 2010 through March 2014.
2. The petitioner was overpaid BCP benefits of \$54,862.00 from May 2010 through March 2014.

THEREFORE, it is

ORDERED

That the petition 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 22nd day of October, 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 October 22, 2014.

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