



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/159914

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2014, under Wis. Stat., §49.45(5), to review a decision by Milwaukee Enrollment Services to recover Medical Assistance (MA), a hearing was held on September 16, 2014, by telephone.

The issue for determination is whether petitioner's household was overpaid MA after failing to report an increase in income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner resides with E.B. and their daughter, and in 2103 and 2014 they received BadgerCare Plus (BC+) MA for a three-person household. In March, 2013, petitioner completed a review. She reported that E.B. was employed by [REDACTED] but was laid off and received unemployment compensation (UC). By a notice dated March 12, 2013, the agency informed petitioner that the household members would receive BC+ with no monthly premium.

3. E.B. went to work at [REDACTED] in May, 2013. Petitioner reported the employment at her six-month review in September, 2013, and the income was verified.
4. After obtaining income information from [REDACTED], the agency determined that the household was overpaid BC+ beginning July 1 2013, because income was over the BC+ limit.
5. E.B. was laid off again in October. Household income in October was \$1,090 earned income and \$901 UC. In November income was \$912 UC, and in December it was \$697 UC plus \$53.13 earned by petitioner at a part-time job. Monthly income stayed below \$2,164 until July, 2014, after petitioner went to work in June and total earned income in July was \$4,880. Petitioner reported both her and E.B.'s employment in June, 2014.
6. By notices dated July 25, 2014, the agency informed petitioner that the household was overpaid a total of \$5,470.67 from July 1, 2013 through July 31, 2014, claim nos. [REDACTED] and [REDACTED]. The overpayment consisted of all BC+ paid on the adult's behalf because the agency found them to be ineligible during the entire period; BC+ paid for the child was not considered to be overpaid.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(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.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Under BC+ rules in 2013 the income limit for caretaker parents was 200% of the poverty level. BC+ Handbook, Appendix 16.1. That amount for a three-person household was \$3,255. Handbook, App. 50.1. If household income was more than 133% of the poverty level the adults would have to pay a premium to receive BC+. 133% of the poverty level throughout in this case was \$2,164 until February, 2014, when it increased to \$2,193.

Petitioner and E.B. appeared at the hearing. Their sole response to the agency's claim is that they reported the employment at [REDACTED] timely. There simply is no evidence to support the testimony. There are no income verification documents in the record prior to September, 2013, and there is no mention of a report in the agency's case note record. Petitioner was unable to provide a copy of a verification form

dated prior to September, 2013. I must conclude, therefore, that no report of the income was made until September, 2013.

With that said, I can find that the household was overpaid BC+ only in the months of July through September, 2013. It was only those months that income was above the 200% of poverty BC+ limit of \$3,255. Beginning October, 2013, income decreased to under the 133% of poverty limit for even the requirement that premiums be paid. It appears that the agency continued to find the household to be ineligible for BC+ for the months after September, 2013 based upon the BC+ Handbook, App. 18.5, which states that a household will lose a BC+ extension if it fails to verify income. I do not believe that provision is applicable here. It is true that if petitioner reported E.B.'s job at [REDACTED] timely the household might have been put in an extension, but the household's income decreased back below the limit in October, which would have made them eligible for regular BC+ again.

Although it appears that household income rose above eligibility levels in July, 2014, all income in that month was reported timely, and thus even if there was an overpayment in July, 2014, it was not caused by the failure to report income.

Therefore, the only months that petitioner was overpaid BC+ was in July, August, and September, 2013. The overpayment for those three months was \$1,212.19.

CONCLUSIONS OF LAW

1. Petitioner was overpaid BC+ MA because she failed to report an increase in household income timely.
2. The overpayment only occurred in the months of July through September, 2013.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to rescind the overpayment claims for petitioner's household for the months of October, 2013 through July, 2014, leaving the overpayment for the months of July through September, 2013. The overpayment claim thus is reduced to \$1,212.19. The agency shall take the action within 10 days of this decision.

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 September, 2014

\sBrian C. Schneider
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 22, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability