FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/160039

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 17, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner liability for medical assistance overpayment in claim number [redacted] for the period from 8/1/13 to 1/31/14 in the amount of $726 (claim for children's coverage), and claim number [redacted] for the same period in the amount of $986.03 (claim for [redacted]'s coverage).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Simone Johnson
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. Petitioner was case head of a BC+ case. Income budget was based on self-employment income reflected on 2011 taxes as 2012 taxes had not been completed.

3. The husband's self-employment income exceeded eligibility thresholds based on 2013 tax return indicating self-employment 2013 income of $3,171.17 per month.

4. Petitioner began working at [redacted] on July 29, 2013. Her gross wages were $2,432.36 in August 2013. This employment was not reported to the agency until 12/30/13 when petitioner submitted a six-month report form (SMRF).

5. On August 15, 2014, notices were sent to petitioner indicating the overpayment claims.

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.

The record indicates the household submitted 2011 tax return and a 2012 tax return to the agency as part of the eligibility and allotment determinations for the 2013 year. But, the tax returns clearly did not reflect the actual sums being earned by the household. [redacted] was earning more than he had previously and this was not discovered until a review of the 2013 tax return. The household had a duty to report the wages that were over the reporting requirement. Furthermore, petitioner herself got a job in July earning an amount that, by itself, exceeded the reporting requirement. Yet, this job and associated wages were not reported until the SMRF was filed in December. From July until December, the household was earning more than three times what the agency thought the household was earning based on the petitioners submitted tax returns and lack of reports of changes. The family would have owed a premium for the children's BC+ coverage which was not determined by the agency as the agency thought the family was earning under the premium threshold amount.

Petitioner argued that she did not report any of the information regarding income changes because she thought that the MA case would close and that she had no such obligation. This was apparently based on a notice she got around [redacted] or June asking her for documentation and informing her that the case would close if she did not complete the review and submit requested documentation. But, petitioner completed and submitted a SMRF in May and submitted 2012 tax information in July. Her case continued. At hearing petitioner conceded that she knew the case was open and that she used her MA explaining that the case should have closed but did not: "if I am not going to apply for something but you are going to keep giving me something then it is going to be used." The MA benefits paid report which is part of exhibit #1 indicates that benefits were paid and capitation rates were paid.

Petitioner also argued at hearing that she had coverage from her husband's employer. But, she also admitted knowing the BC+ coverage remained, at least for her children. Petitioner's efforts put the BC+ case in place. It was her obligation to cancel the coverage if she and her children were otherwise insured. Her impression that such cancellation would be automatic is misplaced.

The question in matters relating to MA overpayments is whether the household received benefits to which they were not otherwise entitled to receive. In this case, petitioner would not have had any BC+ and the children would have been required to have a premium for coverage if the agency knew the actual income. From August 2013 onward, the agency did not know the actual income and petitioner was aware of her duty to report. On this record there was a clear overpayment which must be recouped.

CONCLUSIONS OF LAW

The agency correctly determined the overpayment claims of $726 and $986.03.

THEREFORE, it is **ORDERED**

That this matter 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 14th day of October, 2014

_____

\sJohn P. Tedesco
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 14, 2014.

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