



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/161108

PRELIMINARY RECITALS

Pursuant to a petition filed October 04, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Vernon County Human Services in regard to Medical Assistance, a hearing was held on November 17, 2014, at Viroqua, Wisconsin.

The issue for determination is whether the agency correctly determined that petitioner is liable for a medical assistance overpayment in the amount of \$3,062.83.

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: Bob Uebele

Vernon County Human Services
318 Fairlane Drive, Suite 100
Viroqua, WI 54665-6131

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Vernon County.
2. Petitioner applied for BC+ on 11/23/11. Her application was approved. She was sent notice on 7/6/12 informing her that [REDACTED], [REDACTED], and [REDACTED] were covered under BC+ until there is a change

in the case. The notice informed petitioner that she was to report income exceeding \$1,590.83 per month.

3. In May 2012 petitioner contacted the agency to report being married to [REDACTED].
4. In June the agency sought income verification for [REDACTED] at [REDACTED].
5. The agency budgeted low income for [REDACTED] at this time as he was on family leave. Regular pay increased significantly with his June 23, 2012 check.
6. Petitioner never reported income exceeding the \$1,590.83 monthly income report requirement.
7. The agency determined that during the period from 9/1/12 to 7/31/13 [REDACTED] was earning gross income that regularly exceeded \$2,000 every two weeks (see ex. #2).
8. The agency issued a MA overpayment notice on September 23, 2014 for the amount of \$3,062.83 for the period from 9/1/12 to 7/31/13.
9. The overpayment calculation includes payment related to the two adults in the home ([REDACTED] and [REDACTED]). No overpayment was calculated related to the child.

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.

Wis. Stat. §49.497(1). (Note: Italicized for emphasis.) 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/>.

Department policy then instructs the agency, in a "no eligibility" case, to base the overpayment determination on the actual MA/BCP charges paid.

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.

Applicant/Member error occurs when there is a:

- a. Misstatement or omission of facts by a member, or any other person responsible for giving information on the member's behalf at a BC + application or review.
- or
- b. Failure on the part of the member, or any person responsible for giving information on the member's behalf, to report required changes in financial (27.3) (income, expenses, etc.) or non-financial (27.2) information that affects eligibility, premium, patient liability or cost share amounts.

An overpayment occurs if the change would have adversely affected eligibility, the benefit plan or the premium amount.

BCPEH, §28.1 – 28.2.

In this case, the agency asserts that the petitioner failed to report income from ██████'s employment at ██████. 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).

Petitioner's argument is that she did not realize that was even enrolled in BC+ during the overpayment period. The record reflects that the child was not covered by ██████'s employer's insurance and petitioner sought BC+ for that reason. But, petitioner vaguely and illogically claimed that she had been informed that BC+ would automatically lapse at some period after her child was born. Petitioner provided documentation from ██████ at ██████ which purported to relate to this issue (see ex. #3 & #4). But, the documentation seemed only to address whether petitioner ever asked for ██████ to be insured under the BC+ program. This pertains only to whether an overpayment against payments on behalf of ██████ would have been proper but does not address whether his income should count. The

income is properly counted as the father of the child living in the home his income was countable toward the eligibility determination of the child and petitioner. *BC+ Handbook* § 2.3.2.2. The income should have been reported whether ██████ was insured under BC+ or not. Clearly based on this record the household exceeded 200% FPL during the OP period and was not eligible.

Which now turns me to whether an overpayment against payment made on behalf of ██████ is proper. The July 6, 2014 notice sent to petitioner clearly states that ██████ is covered by BC+. It also states he will continue to be covered until further change is made. The notice also states that if petitioner had questions or needed help she could contact the Department online or at the call center. July 2012 was the time to voice concern about why ██████ was insured under BC+, not November 2014.

Furthermore, I am not persuaded that petitioner simply thought the BC+ she applied for and was enrolled in would end automatically. There is nothing in the record that would suggest that. Certainly, a reasonable person would think that if such a termination occurred that person would be so informed by the insurer.

I also note that it did not help petitioner that despite monthly income at times exceeding \$10,000 (November 2012) she did not report the income to the agency as being above the \$1,590 per month that she had been notified to report.

I suppose it is possible that she just had no idea BC+ was still in effect. Perhaps in the future petitioner will be more proactive about terminating public benefit programs for which she applies once they are no longer needed.

The Department established its case and petitioner's attempt at rebuttal did not help her.

CONCLUSIONS OF LAW

The Department did not err in determining an overpayment of MA in the amount of \$3,062.83.

THEREFORE, it is

ORDERED

That this 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 21st day of November, 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 November 21, 2014.

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