



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/161508

PRELIMINARY RECITALS

Pursuant to a petition filed October 23, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Barron County Department of Human Services in regard to Medical Assistance, a hearing was held on November 13, 2014, at Barron, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of medical assistance.

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: Dayna Stellrecht

Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Barron County.
2. The county agency notified the petitioner on March 5, 2014, that she must notify the agency if her income exceeded \$1,649.17. The petitioner's income in March 2014 was over \$3,028.42.

3. The county agency seeks to recover \$617.90 in medical assistance benefits provided in May and June 2014.
4. The county agency has provided no documentation showing how it determined the overpayment.

DISCUSSION

The department may recover any overpayment of medical assistance that occurs because the recipient failed report income or financial information that would have affected her benefits. Wis. Stat. § 49.497(1). Single adults cannot receive BadgerCare Plus, Wisconsin's medical assistance program for those who are not disabled or elderly, if their countable income exceeds 100% of the federal poverty level. Wis. Stat. § 49.471(4)(a). Recipients must report relevant changes in income within 10 days. Wis. Admin. Code, § DHS 104.02(6). The county agency contends that the petitioner's income exceeded 100% of the federal poverty level—\$1,649.17 for a household her size—in March 2014, when that income rose to \$3,028.14. As a result, it claims, she received a total of \$617.90 in benefits she was not entitled to in May and June 2014.

The petitioner contends that since at least February 2014 she had been in frequent contact with the consortium handling her matter and had received continuously conflicting advice and notices. She also contends that she asked to cancel BadgerCare Plus last spring because she could not afford the premium and assumed it had been. Later, she sought reinstatement, but apparently her coverage had never ended. I have only one notice, dated March 5, 2014. I have agency notes of her contacts, but these do not clearly indicate what conversations took place. But the agency worker at the hearing testified that it seemed to her that the petitioner received conflicting advice. In addition, the agency is not seeking to recover any overpayment that occurred in July and August 2014 because its own errors contributed to the overpayment. Given this, I could probably find that the petitioner could not report her change of income because the information she received from the agency was so confusing and conflicting that she did not know what to report.

But there is another reason that the agency's case falls short. As the party seeking to change the current state of affairs, the agency must establish by the preponderance of the credible evidence that an overpayment occurred. This in turn requires it either to prove that the amount it seeks to recover is correct or to submit enough evidence for the administrative law judge to arrive at a reasonable alternative figure. The agency contends that the \$617.90 the petitioner allegedly received in error represents capitation payments made on her behalf in May and June 2014. The problem is that the agency did not submit any documentation showing how it arrived at this figure. Its worker could not say if the amount changed from month to month. Nor could she say how she knows that this amount is accurate. I she cannot determine whether it is I accurate, I cannot either. Based upon this, I find that the agency has not met its burden of proof and will overturn its finding.

CONCLUSIONS OF LAW

The county agency has not established by the preponderance of the credible evidence that the petitioner received \$617.90 more in medical assistance than she was entitled to in May and June 2014; nor has it presented sufficient evidence for the administrative law judge to find that she received some alternative overpayment amount.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to end the collection of the \$617.90 overpayment of medical assistance it alleges that the petitioner received in May and June 2014.

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 November, 2014

\sMichael D. O'Brien
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 14, 2014.

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