



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MOP/161540

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on November 18, 2014. The hearing in this matter was held at the same time as hearings for two additional overpayment matters concerning the petitioner identified as: FOP-161539 and CCO-161542.

The issue for determination is whether petitioner is liable for an overpayment of MA – BadgerCare Plus (BC Plus) benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Bob Uebele

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of La Crosse County.

2. Petitioner is the father of minor child, AC; the mother of AC is PB.
3. Petitioner, AC, and PB all lived together during the time periods relevant to the BC Plus overpayment identified at *Finding of Fact #4*, below; neither petitioner nor PB reported this to the respondent.
4. The respondent established a BC Plus overpayment claim against petitioner in the total amount of \$682.00. Petitioner's liability constitutes a portion of a larger BC Plus overpayment totaling \$5,601.00; PB is solely liable for \$4,919.00 of the overall overpayment.
5. The petitioner had income during the time period relevant to the BC Plus overpayment listed in *Findings of Fact #4*, above; this put PB's BC Plus test group over the income limits for MA during those time periods.

DISCUSSION

Under BC+ anyone in the home who meets the criteria of being in the BC Plus test group is always included in the group whether or not he or she requested BC Plus. BC Plus Handbook, § 2.2. A co-parent is always part of the BC Plus group under this policy, even if there are other children in the household who are not his. Handbook, App. 2.2.1. This policy mirrors the Wisconsin Administrative Code definition of "fiscal test group" found at Wis. Admin. Code, §DHS 101.03(65).

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, § 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

PB appealed the overpayment as it pertained to her, and contested the respondent's assertion in that case that petitioner and PB resided together. In a decision dated September 16, 2014, Administrative Law Judge Sean P. Maloney wrote:

The burden is on the County to show that DC lived with petitioner and the children during the entire time periods in question. The County has more than satisfied this burden. Therefore, it must be concluded that DC lived with petitioner and the children during the entire time period in question.

The County presented overwhelming convincing evidence that establishes that DC lived with petitioner and the children during the all relevant time periods. This includes: documentation from the Wisconsin Department of Transportation ["DOT"] (vehicle titles; driver's license); credit reports from *TransUnion* and *Experian*; Wisconsin Circuit court records; voter registration; voting records; child support records (both Wisconsin and Illinois); school records; *Facebook* entries; interviews with petitioner's neighbors; interviews with those at the address in La Crosse where DC was claimed to have lived; observation of DC traveling from work to the address where petitioner and the children live; an investigative report dated May 13, 2013; and a second investigative report dated April 16, 2014.

Petitioner testified that she and DC were together but fought and could not make it work. She testified that DC uses her address as his mailing address and that he also used other addresses. She testified that she and DC begin dating again in the summer of 2013, that DC moved back in with her in March 2014 (but was not "full moved-in" until the summer of 2014), and that she notified the County of this. Given all of the other evidence in the record of this matter, petitioner's claim that DC did not live with her (and the children) during the time period of the overpayments is simply not credible.

Based on this evidence, I must conclude that the overpayment was caused by PB's failure to report her household composition and income accurately. As an adult member of PB's assistance group, petitioner is liable for the overpayment pertaining to his child, AC.

DHA Decision, MOP/159511.

I concur with Judge Maloney's findings. In testimony at hearing on the instant matter, the petitioner conceded that he lived with PB at the [REDACTED] *Redact* address, but argued that he did not live there consistently. The petitioner offered additional information at hearing that purportedly demonstrated that he lived at other addresses. See, Exhibits 5-C, 5-D, 5-G, and 5-H. While these documents do demonstrate several addresses utilized by the petitioner, only Exhibit 5-C, an affidavit of [REDACTED] *Redact* actually addresses petitioner's residency. However, that affidavit's contention that petitioner resided with [REDACTED] *Redact* between July, 2008, and March, 2014, is contradicted by petitioner's own testimony indicating that he lived with PB during that time period, albeit inconsistently. I further note that PB's testimony in her own hearing corroborated petitioner's testimony, and not the information provided by the affidavit. Petitioner has failed to substantively rebut the residency information and evidence provided by the respondent.

The petitioner next argued that the La Crosse County Child Support Agency released him from any requirement to provide health coverage for AC. He submitted a March 17, 2011, letter from the Child Support Agency corroborating this argument. However, whether or not petitioner was required to provide health care coverage for AC does not impact his liability for this overpayment. As the Agency's letter, which is specifically addressed to petitioner's employer, attests, "[t]his notice affects only the withholding of health insurance premiums..." BadgerCare Plus rules provide that if a minor received BC Plus in error, the respondent is to make the claim against the minor's parent(s), if the parent was living with the minor at the time of the overpayment. BC+ Handbook, § 28.4.4.

The petitioner also argued at hearing that the income ascribed to him by the respondent is incorrect, as it included "imputed income," i.e., the value of gifts or non-cash bonuses from petitioner's employer. All taxable income is counted when determining BC+ eligibility under MAGI rules. BC+ Handbook, § 16.1.3. Because the value of the gifts/bonuses constitute petitioner's taxable income, I find that the respondent properly included that income in determining petitioner's overall income.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was liable for an overpayment of MA in the amount of \$682.00 because petitioner resided with PB and their child, AC, during the time period of the overpayment.

THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby 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 19th day of December, 2014.

\sPeter McCombs
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 December 19, 2014.

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