



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

MOP/161499

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Lafayette County Department of Human Services in regard to Medical Assistance, a hearing was held on December 11, 2014, at Darlington, Wisconsin.

The issue for determination is whether petitioner is liable for the MA overpayment in claim number 1900413891.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Redact

Lafayette County Department of Human Services
627 Main Street
Darlington, WI 53530

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Lafayette County.
2. Redact and Redact are spouses. They are in a household with 2 children.
3. When Redact applied for benefits, the agency did not budget income for her husband Redact. The case underwent a review in March 2013. No income was reported for Redact.

4. [Redacted] became employed in November. His income was not reported.
5. The agency issued a notice indicating petitioner's liability for a MA overpayment in claim 1900413891 in the amount of \$696.
6. The agency issued a notice indicating petitioner's liability for a FS overpayment claim in the amount of \$1,652 in claim number [Redacted].
7. Petitioner appealed.

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. For a case in which a premium would have been owed, the liability is for the unpaid premiums.

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, petitioner concedes that **Redact**'s income was not reported. Petitioner's rationale was that this was temporary work and not a permanent job "It could be here one day and not the next." This violated the financial reporting rules as all available income must be reported – not merely income derived from permanent jobs.

Petitioner also argued that the agency's determination of the overpayment amount was in error. Petitioner failed to make a cogent argument relating to this claim, however. Petitioner claimed that the agency's determination of income for **Redact** for July, August, and September was overstated. But, those months are not within the overpayment period and are irrelevant here. She made no argument regarding other months. Petitioner was given the opportunity to elaborate on this argument with specificity and to submit documentation on her behalf with regard to this argument following the hearing. Petitioner did not do so.

Petitioner also made the argument that no medical treatment was received during the period so there should be no liability. But, the program rules require repayment of capitation amounts in the case of ineligibility and of unpaid but otherwise due premium amounts if eligibility would remain with a premium. This is what the agency calculated. The petitioner's argument is in error and not consistent with the program rules. Based on the record and documents submitted, the overpayment determination is correct.

CONCLUSIONS OF LAW

Petitioner is liable for the overpayment as set forth in the findings of fact.

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 8th day of January, 2015

\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 January 8, 2015.

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