



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

MOP/161746

PRELIMINARY RECITALS

Pursuant to a petition filed November 6, 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/BadgerCare Plus (BCP), a hearing was held on December 23, 2014, by telephone. A hearing set for November 26, 2014, was rescheduled at the petitioner’s request. At the petitioner’s request, the hearing record was held open for 17 days (7 days initially, then a 10-day extension beginning January 2, 2015); nothing was received.

The issue for determination is whether the petitioner was overpaid BCP from January 1, 2014 through September 30, 2014.

There appeared at that time 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, IM Spec. Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Georgia.

2. The petitioner received BCP for herself from at least July 2013, through September 2014.
3. On October 27, 2014, a *Medical Assistance/BadgerCare Plus Overpayment Notice* and worksheet were sent to the petitioner, advising that she had been overpaid \$2,618.45 in BCP for the 12/1/13 – 9/30/14 period (claims # [Redact], # [Redact]). The overpayment was due to client error (failure to report move out of state).
4. The petitioner had on ongoing Wisconsin BCP case by at least July 2013 through September 2014. In March 2013, she was charged with a felony in Milwaukee County, Wisconsin. Per court records, at her bail hearing in May 2013, she advised the court that “she no longer has a place to stay in WI but does have a place in Atlanta, GA.” The petitioner pled guilty to one felony count in Milwaukee County in September 2013.
5. The petitioner’s sentencing hearing was held on October 15, 2013. She was placed on probation for 18 months, and the Department of Corrections agreed to look into transferring the petitioner’s probation supervision from Wisconsin to the State of Georgia. Per court records, Corrections confirmed to the court in March 2014 that the probation supervision had transferred to Georgia. *See*, Exhibit 2-Q.
6. The petitioner completed an online FS/BCP case review on November 25, 2013, and declared that she was still living in Milwaukee, Wisconsin. However, she reported to the Wisconsin child support agency on November 1, 2013, that she had moved to [Redact] [Redact], Georgia. A Wisconsin family court document (paternity) filed on January 7, 2014, lists the petitioner at the [Redact], Georgia address. *See*, Exhibit 2-P. The petitioner used her FS card the overwhelming majority of the time in Georgia from January through June, 2014, and never used it in Wisconsin from July through September 2014. *See*, Exhibit 2-N.
7. On March 14, 2014, the petitioner performed a telephonic renewal of her FoodShare and BCP case, and declared that she continued to live in Wisconsin. On August 26, 2014, the county agency issued a residence verification request to the petitioner. When she did not respond, the agency closed her BCP case effective September 30, 2014. The petitioner currently lives in Georgia.
8. The petitioner lived in Georgia from at least December 2013 through September 2014. All BCP benefits paid on her behalf during the period were overpayments. The \$2,618.45 total included the subtotal of \$2,430 in petitioner’s monthly capitation fees paid to the petitioner’s Wisconsin BCP HMO. *See*, Exhibit 2-R.

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. Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook(BCPEH)*, §28.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a “no eligibility” case, to base the overpayment determination on the actual MA/BCP charges paid. *BCPEH*, §28.1 – 28.2.

The arithmetic of the agency’s overpayment determination is not in dispute. Rather, the petitioner argues that she was residing in Wisconsin during the overpayment period. The Department contends that she was not living in Wisconsin during the period, and therefore could not claim BCP through Wisconsin. Because the petitioner repeatedly declared a Wisconsin residence on her FS/BCP renewals and failed to

make a 10-day report of an address change, she engaged in misstatements/omissions of fact while receiving BCP benefits. *See*, Wis. Stat. § 49.471(6)(h), for 10-day reporting rule.

The Department has met its burden of establishing the overpayment by a preponderance of the credible evidence. The agency introduced the court records showing the petitioner's statement at her May 2013 bail hearing, in which she stated that she had a place to stay in Georgia. Those records also show that at her October 2013 sentencing hearing, she asked to have her probation supervision transferred from Wisconsin to Georgia; by March 2014 Wisconsin DOC confirmed to the court that supervision had been transferred to Georgia. It is highly unlikely that a supervision transfer would have occurred if the petitioner was not living, the majority of the time, in Georgia. At hearing, the petitioner agreed that her probation supervision was done by Georgia throughout the overpayment period. Nonetheless, she argued that she divided her time between Wisconsin and Georgia, so she saw no need to close her Wisconsin case and file a new application with the State of Georgia. She agreed that she used her FoodShare card in both Wisconsin and Georgia during the period. Per her testimony, her son remained in school in Wisconsin during the school months of the period. The hearing record was held open to allow the petitioner to submit additional documentation from official sources of her whereabouts to this ALJ post-hearing; nothing was received. The petitioner's assertion of Wisconsin residence during the overpayment period is not credible.

CONCLUSIONS OF LAW

1. The petitioner failed to timely report her change to an out-of-state residence, resulting in the creation of a BCP overpayment.
2. The county agency correctly determined that the petitioner was overpaid \$2,618.45 in BCP fees during the December 2013 through September 2014, period.

THEREFORE, it is

ORDERED

That the petition 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 Wisconsin county where you live/lived. 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 January, 2015

\sNancy J. Gagnon
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 21, 2015.

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