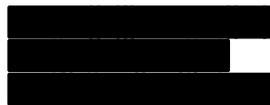




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/161863

PRELIMINARY RECITALS

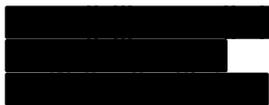
Pursuant to a petition filed November 12, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Barron County Department of Human Services in regard to Medical Assistance, a hearing was held on January 13, 2015, at Barron, Wisconsin. Hearings scheduled for December 15 and 18, 2014, were rescheduled at the petitioner's request.

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:



Respondent:

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

By:

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 #) is a resident of Barron County.
2. The county agency seeks to recover \$507.89 in medical assistance provided to the petitioner's household from November 1, 2012, through June 20, 2013.

3. The BadgerCare Plus program notified the petitioner on August 21, 2012, that he must report to the agency within 10 days if his household monthly income exceeded \$3,841.66, which was then 200% of the federal poverty level.
4. There are four persons in the petitioner's household.
5. The petitioner's household income was \$4,240.92 in September 2012. He never reported this to the county agency.
6. The petitioner's household income exceeded 200% of the federal poverty level from September 2012 through June 2013.
7. The federal poverty level was \$1,987.50
8. The petitioner was assessed a premium of \$222 per month, beginning in October 2012.
9. The August 21, 2012, notice informed the petitioner:
 - If you do not pay your premium, your BadgerCare Plus benefits will end. You may not be able to enroll in BadgerCare Plus for:
 - 12 months for adults
 - 6 months for children
10. The petitioner did not pay his premium after October 2012.
11. The petitioner never reported that his household income had increased in September 2012.
12. The petitioner never reported to the county agency that he wished to no longer receive BadgerCare Plus.

DISCUSSION

The department may recover any overpayment of medical assistance that occurs because a "recipient" or anyone "responsible for giving information on the recipient's behalf" fails "to report any change in the recipient's financial ...that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements." Wis. Stat. § 49.471(10)(b)3; *BadgerCare Plus Handbook*, 19.1. The county agency seeks to recover \$507.89 in medical assistance paid to the petitioner's household from November 1, 2012, through June 20, 2013, because it contends that he failed to report income that affected their benefits. He contends that he is not responsible for the overpayment because a misleading notice convinced him that he could simply stop paying his premium to end his benefits.

Before April 2014, BadgerCare Plus provided medical assistance to children under 19 and their parents. Wis. Stat., § 49.471. 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). After July 1, 2012, adults in households with income that exceeded 133% of the federal poverty level had to pay a premium. Premiums were not assessed for children until the household income exceeded 200% of the federal poverty level. If the household's income changed enough to affect benefits, it had to report the change to the agency within 10 days. Wis. Admin. Code, § DHS § 104.02(6).

The agency notified the petitioner on August 21, 2012, that he must report if his household income exceeded \$3,841.66, which was then 200% of the federal poverty level. *BadgerCare Plus Handbook*, § 50.1. In September 2012, his household's income was \$4,240.92. Overpayments begin the month the failure to report the change would have affected benefits. *BadgerCare Plus Handbook*, § 28.4.1. The petitioner's benefits would have been affected in November 2012 because he would not have to report increased income until October 10, 2012, and the change would not have reduced his benefits until the month after this. That is when the agency determined the overpayment began.

But before determining whether the agency correctly calculated the petitioner's overpayment, it is necessary to determine whether it can collect *any* overpayment. As noted, he does not have to repay the alleged overpayment if the change of income does not affect his benefits. Still, he can reasonably argue if the agency's notice convinced him that he would not have benefits in November, he would have no reason to report the change. But this argument is only valid if he can show that the agency acted improperly when it continued his benefits past October 2012.

The notice the petitioner relies upon states the following:

If you do not pay your premium, your BadgerCare Plus benefits will end. You may not be able to enroll in BadgerCare Plus for:

- 12 months for adults
- 6 months for children

The petitioner testified that he assumed this meant that his benefits would automatically end without needing to report that he no longer desired those benefits if he did not pay the premium. I have a hard time believing that someone in the petitioner's profession—he is a lawyer—believes he could end his benefits without any consequences by defaulting on his payment. The general tone of this notice is threatening: it not only says his benefits will end but that he cannot get them back for six months to a year. I assume internet, telephone, and insurance bills contain similar threatening language. Does he also believe that the proper way to end those services would be to stop paying for them without notifying the provider that he no longer wished to receive them? But even if he did harbor such beliefs, his actions indicate that he knew he was still covered. His wife incurred a \$119 medical bill in November 2012 that was paid by BadgerCare Plus. If he and his wife thought that their benefits had ended, why didn't they tell this to their medical provider? Providers routinely ask if one's insurance has changed whenever one receives care. The petitioner suffered no legal harm when the agency did not quickly end his eligibility because he has no right to prosper from his own misdeeds, which is what would happen if he was not found liable for the overpayment: A robber cannot escape the consequences of his second offense by arguing that the police did not catch him quickly enough on the first. The petitioner is responsible for any overpayment that occurred from November 1, 2012, forward because he failed to report a change of income to the agency.

BadgerCare Plus overpayments are calculated by adding all medical expenses and capitation rate fees paid on behalf of the household, adding any premiums the household owed, and then subtracting any premiums the household has paid while incorrectly receiving benefits. The amount of the overpayment for each month depends upon the actual amount of income earned during that month *BadgerCare Plus Handbook*, § 28.4.2. At the time of the overpayment, premiums for children were \$15 a month for households with income between 230% and 240% of the federal poverty level, \$23 a month for households with income between 240% and 250% of the federal poverty level, and \$82 for households with income between 290% and 300% of the federal poverty level. Premiums for adults were based upon a percentage of income. The percentage increased as income rose, ranging from 3% to 9.5% of total income. *BadgerCare Plus Handbook*, § 48.1.1. (Releases 12-2 and 13-1)

The agency provided sheets showing the petitioner's household income each month along with a combination of typewritten and handwritten notes indicating how it arrived at the totals. Despite extensive review, I cannot figure many of them out. The documentation established that the petitioner was assessed a \$221 monthly premium beginning October 1, 2012. It determined that his overpayment in November 2012 was \$239.93, which it arrived at by adding a \$193.92 capitation fee paid on his behalf and \$46.31 under the heading "net paid Medicaid." I do not understand how the agency arrived at \$46.31. It seems that if it is an amount "paid Medicaid" it should be subtracted rather than added to what the petitioner owes. But his wife also received medical care that was billed to Medicaid at \$119. *Exhibit 3*. The agency does not explain why this was not added to the overpayment. Also, my calculations indicate that his

actual premium, based upon 7.3% of the household income of \$4,570.48 that month, should have been \$333.65. I assume from the testimony that by November the petitioner had stopped paying any premium. This was never addressed. The agency must establish some amount of overpayment by the preponderance of the credible evidence. Regarding his benefits for November 2012, it has established only the portion of the overpaid pertaining to the \$193.92 capitation fee.

The remainder of the overpayment pertains to coverage received by one of the petitioner's children. No premium was originally assessed because the agency incorrectly assumed that the household's income was less than 200% of the federal poverty level. From November 2012 through April 2013 the household income was somewhere between 230% and 250% of the federal poverty level. The agency's worksheets correctly determined that the petitioner owed either a \$15 or \$23 premium in each of these months. *Exhibit 4*. For May 2013, it determined that he owed an \$82 premium for the child because his household income was 290.30% of the federal poverty level. The agency also claims that \$80.98 was paid by Medicaid but does not explain what this payment was for. Because I cannot determine from the evidence what it is for, I will exclude it from the overpayment. The total premiums owed for this period were \$186. There is not enough evidence to establish any more overpayment for benefits paid on behalf of the child. Adding the two portions of the overpayment together bring the overpayment to \$379.92. I will remand this matter to the county agency with instructions to reduce the overpayment to this amount.

CONCLUSIONS OF LAW

The petitioner received a \$379.92 overpayment of medical assistance because he failed to report an increase in income to the agency.

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 reduce the amount of the petitioner's overpayment of medical assistance that occurred from November 2012 through May 2013 to \$379.92.

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 18th day of February, 2015

\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 February 18, 2015.

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