



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MOP/162101

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2014, under Wis. Stat., §49.45(5), to review a decision by the Portage County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on January 14, 2015, by telephone.

The issue for determination is whether the county correctly determined an MA overpayment.

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact
Portage County Dept. of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Portage County.
2. By a notice dated September 18, 2012, the county informed petitioner that BadgerCare Plus (BC+) MA would end October 1, 2012 for the adults because they did not pay a premium. BC+ for the children remained in place with no premium. The notice stated that the household needed to report an increase in income if monthly income went above \$3,376.25.

3. Household income was \$4,864 in September, 2012. It remained that high or higher through May, 2013. Had the increased income been reported timely, there would have been a monthly \$292.59 premium during the period November 1, 2012 through May 31, 2013.
4. By notices dated September 16, 2014, the county informed petitioner and her husband that they were overpaid \$2,048.13 in BC+ from November 1, 2012 through May 31, 2013, claim no. 0900414110. The notice included language that if they wanted to appeal, they had to do so by October 31, 2014.
5. Petitioner filed this appeal on November 18, 2014.

### DISCUSSION

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

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Income Maintenance Manual, §3.3.2. Language concerning the right to appeal and the time limit is included on all department notices. The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Wis. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

Petitioner's appeal was filed after the October 31, 2014 deadline, and thus the Division of Hearings and Appeals does not have authority to consider its merits. Petitioner testified that she mailed an appeal soon after getting the notice but it did not get to the Division, so she filed a second appeal in November. This office has no record of an earlier appeal, and petitioner unfortunately kept no record of it. Since the appeal is filed when received by this office, I cannot making a finding that petitioner filed the appeal timely.

Petitioner did not report the increased income because she thought it would not matter if the Forward Health card was not used. The program nevertheless kept the MA open for the children and likely paid monthly capitation fees, and thus the agency had to seek recovery of the overpayment. The overpayment

is the amount of the premiums that would have been paid had the increased income been reported. See BC+ Handbook, App. 28.4.2.

It does not matter that petitioner's failure to report was due to a simple error. The failure to report the income does not have to be fraudulent.

Petitioner's father, who appeared with her, suggested that the amount could be settled somehow. The Division of Hearings and Appeals does not have authority to negotiate or otherwise reduce the amount. This office can find only that the overpayment amount was determined correctly. Because petitioner did not appeal timely, I must conclude that the amount was correct.

### CONCLUSIONS OF LAW

Petitioner's appeal of an MA overpayment was untimely, and thus the overpayment claim amount of \$2,048.13 is upheld.

**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 20th day of January, 2015

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\sBrian C. Schneider  
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 20, 2015.

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