



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/162148

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 2014, under Wis. Stat., §49.45(5), to review a decision by the Fond du Lac County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on February 19, 2015, by telephone. The hearing was a rehearing granted by the Division of Hearings and Appeals on February 3, 2015.

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

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Deborah Bohlman
Fond du Lac County Dept. of Social Services
50 N. Portland St.
Fond du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.
2. Petitioner received BadgerCare Plus (BC+) MA for herself and two children in 2013. In August, 2013, petitioner reported that she no longer was employed by [REDACTED], but was then employed at [REDACTED].
3. The county obtained verification of the new income showing that petitioner worked 40 hours per week at up to \$10.50 per hour. The county worker was concerned because petitioner's pay stubs

showed higher weekly hours, but the employer verified that prospectively petitioner was expected to work only 40 hours per week. On August 22, 2013, the county informed petitioner that BC+ would continue in October with no premium based upon \$1,758.70 gross monthly income. The notice told petitioner that she needed to report if her monthly income rose above \$2,069.

4. In 2014 the county received state wage matches showing higher than budgeted income. The county obtained petitioner's actual income from [REDACTED] in 2013, and it showed that her income was \$3,316 in August, 2013, \$2,251 in September, \$3,227 in October, and \$2,179 in November. The county determined that the income figures budgeted for BC+ were incorrect, and that petitioner would have had BC+ premiums for October and November had correct income been budgeted.
5. By a notice dated October 31, 2014, the county informed petitioner that she was overpaid \$252 in MA in October and November, 2013 due to missed premium payments, claim nos. [REDACTED] and [REDACTED].

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. The error does not have to be intentional; unintentional errors are to be recovered but are not considered to be fraudulent. Overpayments caused by agency error are not recoverable.

The Handbook, App. 28.4.2 provides that if an overpayment is caused by a failure to report increased income, and the household would have remained eligible for BC+ but with increased premiums, the overpayment is the difference between the premiums originally paid and the correct premiums based on the actual income. In this case no premiums were paid originally, so the overpayment is the full amount of the premiums that should have been paid.

Petitioner testified that she did not report higher income because she never expected to receive higher income. She kept being called in to work extra hours by the employer because other staff would miss work or quit, and then the employer would bring on new staff so it would appear that petitioner's hours would be reduced again, only for the same cycle to happen again. I am sympathetic to petitioner because it appears that the employer was the real culprit by insisting to the county that petitioner's hours would be

reduced when in fact they were not. Nevertheless, the error resulted from petitioner, through her employer, under-reporting income. Had petitioner's income been budgeted correctly, she would have been required to pay premiums in October and November, 2013 totaling \$252. I thus conclude that the county correctly determined the MA overpayment.

CONCLUSIONS OF LAW

The county correctly determined that petitioner was overpaid MA in October and November, 2013 because her prospective income was under-reported in those two months.

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 23rd day of February, 2015

\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 February 23, 2015.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability