



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/162252

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 26, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on February 05, 2015, at Friendship, Wisconsin. At the request of petitioner's wife, a hearing set for January 8, 2015 was rescheduled. At the request of the petitioner and her husband, [REDACTED] [REDACTED], the appeals were consolidated for Case Nos. MOP/162251 and MOP/162252 during the same hearing.

The issue for determination is whether there is any remaining issue in dispute regarding the petitioner's BadgerCare (BC) overpayment of \$1,244 from the period of July 1, 2013 to December 31, 2013, due to petitioner's failure to timely report her daughter's employment and income resulting in unpaid BC premiums and household income above the BC income eligibility.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Megan Thurston, ESS  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 76 year old resident of Adams County resident of Adams County who resides with his wife, [REDACTED], and their daughter, [REDACTED].
2. The petitioner's wife received BadgerCare (BC) Plus benefits for herself, [REDACTED], and her husband during the period of July 1, 2013 to December 31, 2013.
3. The petitioner's wife failed to report by June 10, 2013 that her household income ([REDACTED]'s new employment and income) exceeded the 133% FPL reporting threshold during May, 2013, which resulted in income ineligibility and an unpaid BC premium for [REDACTED] during portions of BC overpayment period of July, 2013 through December, 2013.
4. The Department sent a November 20, 2014 BadgerCare Plus Overpayment Notice to the petitioner stating that they received an overpayment of BadgerCare benefits in the amount of \$1,274.00 (\$30 for her husband) during the period of July 1, 2013 to December 31, 2013, due to failure to timely report new employment and income of [REDACTED], resulting in above the income eligibility (above 200% FPL) for petitioner during July through September, 2013, and unpaid BC premiums for [REDACTED]. Exhibits 9 and 10. The BC payments for the petitioner needed to be repaid during the months when the household was above the 200% income eligibility limits.
5. During the February 5, 2015 hearing after hearing the agency's case, the petitioner's wife admitted that she owed the full BC overpayment of \$1,244 for the period of July 1, 2013 to December 31, 2013 for herself and her daughter, and indicated there was no longer any issue in dispute regarding the household's BC overpayment.
6. The county agency representative sent a detailed, thorough February 5, 2015 closing statement to DHA which in part stipulated that the county agency was not pursuing the \$30 BC overpayment against the petitioner's husband in Case No. MOP/162252 during the period of July 1, 2013 to December 31, 2013.

### DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (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. ...

*(Emphasis added)*

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.wi.gov/bcplus/> :

### **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.

*(Emphasis added).*

### **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.

...

#### **2. Fraud. ...**

*BCPEH*, §28.1 – 28.2.

**The overpayment must be caused by the client’s error. Overpayments caused by agency error are not recoverable.**

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, during the February 5, 2015 hearing, the county agency presented a well-organized and documented case to establish that it was correctly pursuing an MA overpayment against the petitioner and her daughter. During the hearing, petitioner’s wife was unable to refute the county’s case, or undermine any of its substantial documentation that it was correctly seeking an MA overpayment against the petitioner during the period of July 1, 2013 to December 31, 2013. Furthermore, petitioner’s wife did not dispute the county agency’s calculation of their household income during the BC overpayment period.

In fact, during the February 5, 2015 hearing after hearing the agency's case, the petitioner's wife admitted that she owed the full BC overpayment of \$1,244 for the period of July 1, 2013 to December 31, 2013 for herself and her daughter. The petitioner further indicated there was no longer any issue in dispute regarding the household's BC overpayment. Basically, petitioner's wife wanted to know how her repayments could be arranged so those repayments were manageable in her household's financial budget. Accordingly, based upon the above, I conclude in part that there is no longer any remaining issue in dispute regarding the petitioner's wife's BadgerCare overpayment of \$1,244 from the period of July 1, 2013 to December 31, 2013. However, I also confirm that the county agency stipulated in part that the county agency was not pursuing the \$30 BC overpayment against the petitioner's husband in Case No. MOP/162252 during the period of July 1, 2013 to December 31, 2013. See Finding of Fact #6 above.

### CONCLUSIONS OF LAW

1. There is no longer any remaining issue in dispute regarding the petitioner's BadgerCare overpayment of \$1,244 from the period of July 1, 2013 to December 31, 2013, as the petitioner's wife agreed during the hearing that she owes the \$1,244 overpayment.
2. The county agency agreed to rescind the \$30 BC overpayment against the petitioner during the period of July, 2013 through December, 2013 in Case No. MOP/162252.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the county agency with instructions to rescind the \$30 BC overpayment against [REDACTED] [REDACTED] during the period of July, 2013 through December, 2013 in Case No. MOP/162252, within 10 days of the date of this decision. In all other respects, 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 18th day of March, 2015

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\sGary M. Wolkstein  
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 March 18, 2015.

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