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# STATE OF WISCONSIN
## Division of Hearings and Appeals

In the Matter of

Redact

Redact

DECISION

MOP/162456

## PRELIMINARY RECITALS

Pursuant to a petition filed December 4, 2014, under Wis. Stat., §49.45(5), to review a decision by Waushara County Human Services to recover Medical Assistance (MA), a hearing was held on January 22, 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
Waushara County Human Services
P.O. Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # Redact ) is a resident of Waushara County.
2. Petitioner receives BadgerCare Plus (BC+) MA as part of a two-person household with her husband. In April, 2014 they had an eligibility review, and they were determined to be eligible for BC+ based upon $1,021.40 per month income. They were told in an April 25 notice that they needed to report an increase in income above $1,310 per month.

3. Petitioner began to work as a paid caretaker for her mother in early June, 2014. She was paid $150 cash per week. She did not report the new work to the FS agency. Monthly income rose to $1,621.40.

4. The county discovered the caretaker employment in September. Petitioner acknowledged receiving the income but stated that she thought that she did not have to report such employment.

5. By a notice dated November 17, 2014, the county informed petitioner that the household was overpaid $1,637.05 in MA in August and September, 2014, claim no. Redact. Because household income was over 100% of the Federal Poverty Level (FPL) in those months, all MA payments were considered to be overpaid.

## 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.

Prior to April 1, 2014, the state had an MA program for childless adults called the BC+ Core program with an income limit of 200% of the FPL. The program was limited to only a small number of potentially eligible participants due to enrollment limits. State law changed effective April 1, 2014. As of that date all childless adults were eligible for BC+ but with the income limit reduced to 100% of the FPL, which, for a two-person household, was $1,310.83. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the BC+ Handbook, Appendix 50.1 for the limit.

Petitioner testified that she did not intend to take advantage of the program because she did not realize that she had to report the cash income. However, all income must be budgeted unless it specifically is exempt, and the type of income earned by petitioner is not exempt. See Handbook, App. 16.1.3. I must conclude that the county correctly determined the overpayment. Household income in the two months in question was above 100% of the FPL, making petitioner and her husband ineligible for BC+. The failure to report the income was due to a simple error and not fraud, but the law requires the claim to be made even in situations of simple error.

## CONCLUSIONS OF LAW

The county correctly determined a BC+ overpayment caused by petitioner's failure to report income that would have made the household ineligible.

**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 26th 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 26, 2015.

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