



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/162619

PRELIMINARY RECITALS

Pursuant to a petition filed December 12, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on January 21, 2015, at Waupaca, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of BadgerCare Plus.

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: Chad Holmes

Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County.
2. The county agency notified the petitioner on November 21, 2014, that it would seek to recover a \$2,975.12 overpayment of BadgerCare Plus that allegedly occurred from December, 2011, through December, 2013.

3. Petitioner's household income increased over the amount budgeted during the overpayment period due to overtime and double time pay received by petitioner's husband.
4. The petitioner did not notify the agency within 10 days that her household income had increased.

DISCUSSION

The county agency seeks to recover \$2,975.12 from the petitioner for an alleged overpayment of BadgerCare Plus benefits provided from December, 2011, through December, 2013, because it contends that she failed to report income that affected their benefits. During the time period at issue here, BadgerCare Plus provided medical assistance to children under 19 and their parents. Wis. Admin. Code, § 49.471.

The department may recover any overpayment of medical assistance that occurs because 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 [BadgerCare].
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.

Wis. Stat. § 49.497(1).

Eligibility and premiums depended upon total household income. *See* Wis. Stat. § 49.471(1)(f). During the period of the alleged overpayment, adults generally 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). 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 their income exceeded 200% of the federal poverty level. Wis. Stat. § 49.471(10)(b); *BadgerCare Plus Handbook*, 19.1.

All medical assistance recipients must report changes to the agency within 10 days. Wis. Admin. Code, § DHS § 104.02(6) Those receiving BadgerCare Plus had to report changes in income must be reported when the income reached any of the following levels:

- 100% FPL
- 133% FPL
- 150% FPL
- 185% FPL
- 200% FPL
- 250% FPL
- 300% FPL
- 350% FPL
- 400% FPL

BadgerCare Plus Eligibility Handbook, § 27.3.

The petitioner was an ongoing recipient of BadgerCare Plus. By December 2011, petitioner's husband's income increased due to overtime and double time hours. Petitioner did not believe she had to report this, indicating that she understood only that an increase in his hourly wages or a bonus would have to be

reported. However, she is responsible for any overpayment that occurred because she failed to report income, even if she misunderstood the reporting requirement. She is not responsible for any overpayment that occurred because the agency failed to act on any change in income that she did report.

The period of the overpayment depends upon whether she failed to report information about her income during her renewal application process or whether she failed to report a subsequent change of income. This is based upon policy in the *BadgerCare Plus Handbook*, § 28.4.1. It states the following concerning the overpayment period:

Misstatement or Omission of Fact

If the overpayment is a result of a misstatement or omission of fact during an initial BC+ application or review, determine the period for which the benefits were determined incorrectly and determine the appropriate overpayment amount

Failure to Report

For ineligible cases, if the overpayment is a result of failure to report a required change, calculate the date the change should have been reported and which month the case would have closed or been adversely affected if the change had been reported timely.

The petitioner has not established any error on the part of the respondent in determining that an overpayment occurred, and that the overpayment commenced in December, 2011.

The next question is when the petitioner's overpayment period ended. Petitioner testified that she contacted the respondent in March of 2013, and cancelled her BadgerCare Plus benefits. A corroborating case comment Dated March 8, 2013, indicated that petitioner called the respondent and informed it that she could not afford the premium. She testified that she specifically asked to terminate her BadgerCare Plus enrollment. As further corroboration of this, petitioner noted that she and her children were covered under her employer's health insurance plan commencing in 2013. I find that the petitioner has established that she cancelled her BadgerCare Plus enrollment in March, 2013. The April-December, 2013 overpayment is agency error, i.e., the respondent failed to terminate her benefits following her request that it do so. The overpayment must be caused by the client's error; overpayments caused by agency error are not recoverable. See, *BadgerCare Plus Handbook*, § 28.2. As such, the respondent has not established a recoverable overpayment of BadgerCare Plus benefits between April, 2013 and December, 2013.

Because petitioner cancelled her BadgerCare Plus enrollment in March of 2013, I will remand this to the county agency with instructions to reduce the overpayment by those amounts asserted for the months of April through December, 2013.

CONCLUSIONS OF LAW

1. The petitioner failed to report a change of household income that began in December 2011.
2. Petitioner terminated her BadgerCare Plus enrollment in March, 2013.
3. Petitioner is not liable for any overpayment of BadgerCare Plus benefits that occurred between April of 2013 and December of 2013.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent with instructions that within 10 days of the date of this decision it reduce the overpayment of BadgerCare Plus sought from the petitioner by limiting the overpayment period to December, 2011, through March, 2013.

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 27th day of February, 2015.

\sPeter McCombs
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 27, 2015.

Waupaca County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability