



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/162692

PRELIMINARY RECITALS

Pursuant to a petition filed December 16, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance, a hearing was held on February 10, 2015. The hearing was adjourned due to the Petitioner not receiving the agency exhibits prior to the hearing. On March 12, 2015, a second hearing was held at Milwaukee, Wisconsin. The record was held open post-hearing to allow the agency to submit additional evidence. Additional evidence was submitted on March 13, 2015. On March 17, 2015, the Petitioner submitted a response. The record was closed on March 17, 2015.

The issue for determination is whether the agency properly seeks to recover an overissuance of MA benefits in the amount of \$4,717.92 for the period of December 1, 2013 – November 30, 2014.

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: Tanya Allen
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On May 21, 2010, the Petitioner submitted an application. He reported no income. On May 24, 2010, the agency issued a Notice of Decision informing the Petitioner that he would receive BC+ Core plan benefits effective May 1, 2010.
3. On March 4, 2011, the agency received Petitioner's renewal application. He reported no income.
4. On February 10, 2012, the Petitioner submitted a renewal application. He reported \$500/month income but no job was reported.
5. On August 10, 2012, the Petitioner submitted a renewal application. He reported \$0 income.
6. On March 4, 2013, the agency received a renewal application. Petitioner reported no income.
7. On April 30, 2013, [REDACTED] was registered with the Wisconsin Department of Financial Institutions. The registered agent is the Petitioner.
8. On December 6, 2013, the Petitioner submitted a renewal application. He reported a household of three. He reported no income. Petitioner's child was with him in December, 2013 and Petitioner started receiving \$280/month in child support in December, 2013.
9. On March 10, 2014, the agency completed a phone interview with the Petitioner. He reported that he is self-employed with seasonal work. He reported he is currently not working and had only \$280/month in child support for income. He had a household of two.
10. On July 2, 2014, the Petitioner submitted a registration application for a vehicle to be registered to [REDACTED].
11. On October 14, 2014, the agency issued a request to the Petitioner for his personal and business tax returns for the years 2010-2013.
12. On October 15, 2014, the Petitioner submitted a renewal application. He reported a household of two. He reported self-employment income of \$1000/month. He reported his business started January, 2013. He reported child support income of \$154.47/month.
13. On October 16, 2014, the agency issued a Notice of Proof and Information Needed to the Petitioner requesting income information for Petitioner's self-employment with [REDACTED] [REDACTED] [REDACTED].
14. On November 10, 2014, the agency issued a Notice of Decision terminating Petitioner's FS and BC benefits for failure to provide requested verification.
15. On November 19, 2014, the agency issued a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice to the Petitioner informing him that the agency intends to recover \$4,717.92 in BC+ benefits he received for the period of December 1, 2013 – November 30, 2014.
16. On December 22, 2014, the agency completed a phone interview with the Petitioner. He reported that he is self-employed and has been in business for a year and a half. On December 30, 2014, the Petitioner submitted a renewal application. He reported a household of two. He reported self-employment income of \$386.42/month. He reported his business started January, 2012 and that he filed 2013 taxes. He reported child support income of \$138.91/month.
17. On December 30, 2014, the Petitioner submitted his 2013 taxes to the agency. He reported that his business started in May. He reported business income of \$4,637 and adjusted gross income of \$4,309 and taxable income of \$0. He reported gross receipts/sales of \$47,289 and gross profit of \$21,638. He reported expenses of \$7,088 including depreciation expense of \$3,144.
18. The Petitioner's Facebook page indicates he is the owner at [REDACTED] since May 23, 2005. A Facebook page for [REDACTED] states that the business was started in May, 2008.

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.

In this case, the agency asserts that the Petitioner failed to report self-employment income and it therefore seeks to recover all benefits paid to the Petitioner.

The burden is on the agency to demonstrate that there was an overissuance of benefits. In the case of BC+, the agency must demonstrate that the recipient failed to report income or any change in financial status "that would have affected the recipient's eligibility for benefits." In this case, the agency failed to demonstrate that the Petitioner had income that would have affected his eligibility for benefits. Specifically, the agency failed to properly consider the Petitioner's income during the overpayment period based on the 2013 tax return submitted by the Petitioner.

Eligibility and premiums depended upon total household income. See Wis. Stat. § 49.471(1)(f). Prior to April 1, 2014, adults generally could not receive benefits if their household's income exceeded 200% of the federal poverty level. This was \$2621/month for a household of two. This limit generally did not apply to children. Wis. Stat. § 49.471(4)(a). Adults in households with income that exceeded 150% 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.

Effective April 1, 2014, the income limit for adults was reduced to 100% FPL which was \$1310/month for a household of two.

The agency presented no evidence to support its assertion that the Petitioner's income or financial situation during the overpayment period changed so that it would have affected his benefits and required him to report the change to the agency. While there was evidence that the Petitioner started a business and had self-employment income, there is no evidence that the change in income, based on the 2013 tax return, exceeded the program limits in any way that would have affected his BC+ benefits. The agency

failed to meet its burden to demonstrate that it properly seeks to recover BC+ benefits for the period of December 1, 2013 – November 30, 2014.

CONCLUSIONS OF LAW

The agency failed to meet its burden to demonstrate that it properly seeks to recover BC+ benefits for the period of December 1, 2013 – November 30, 2014.

THEREFORE, it is ORDERED

That the agency shall take all administrative steps necessary to rescind the BC+ overpayment notice (Claim # [REDACTED]) issued to the Petitioner and cease any action to recoup BC+ benefits for said claim. These actions shall be completed within 10 days of the date of this decision.

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 Milwaukee,
Wisconsin, this 14th day of April, 2015

\sDebra Bursinger
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 April 14, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability