



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/162725

PRELIMINARY RECITALS

Pursuant to a petition filed December 18, 2014, under Wis. Stat., §49.45(5), to review a decision by the Dane County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on January 28, 2015, by telephone.

The issue for determination is whether an MA overpayment was caused by client error.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Megan Thurston
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- Petitioner (CARES # ) is a resident of Dane County.
- Petitioner received FoodShare and BadgerCare Plus (BC+) MA. On September 10, 2013, petitioner filed a renewal application for both programs. On the renewal petitioner reported that she worked at , 12 hours per week at \$9.75 hours. She reported also that she worked at , having started there on August 9, 2013, 72 hours bi-weekly at \$11.50 per hour. She reported finally that a job at  ended August 27, 2013.

3. [REDACTED] is a business name of [REDACTED].
4. On September 26, 2013, the county notified petitioner that she and her children were eligible for BC+ with no premium as of September 1, 2013. Only the [REDACTED] [REDACTED] income was budgeted. A second notice was sent on October 7, 2013. Importantly, that notice stated that if income went over \$2,116, petitioner should report it by the tenth of the next month.
5. Petitioner's income rose above that threshold in December, 2014.
6. On March 26, 2014, petitioner did another renewal because she missed her six-month review that was due by the end of February. She reported the [REDACTED] income again, and the county obtained verification of her income. The [REDACTED] job had ended. The verification from [REDACTED] reported that petitioner made \$926.13 bi-weekly (essentially 40 hours per week times \$11.50 per hour). BC+ continued with no premium.
7. Petitioner was working substantial overtime/weekend time during those months. In April, her income was over \$3,000, in May it was over \$2,700, and in June it was back down to \$2,025.
8. The county discovered unreported/underreported income from [REDACTED] via a state wage match. By notices dated November 14, 2014, the county informed petitioner that she was overpaid MA totaling \$2,256 from October 1, 2013 through October 31, 2014 due to client error, failure to report income, separated into claim nos. 0900418960 and 2900418962. Although the notice says that the claim began October 1, 2013, it actually began September 1, 2013.

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.

The primary issue is whether the overpayment was caused by agency or client error. Petitioner did not contest the calculations; her position was that she reported her employment and the county erred by failing to budget the income.

I agree with petitioner for the first part of the overpayment. It appears that the county worker mistook the [REDACTED] job reported in September, 2013 as being the same job as the one petitioner reported to have

ended. Thus the county did not seek verification or other information about the [REDACTED] job. Even Ms. Thurston was unaware that [REDACTED] and [REDACTED] were the same entity until petitioner stated as such during the hearing. Thus I conclude that the initial error was made by the county in not following up on the report that petitioner was working at [REDACTED]. Petitioner was not blameless; she received two notices stating that her only income was \$360 per month from Interim, and she made no effort to correct the error. Nevertheless, the primary source of the error was the county worker who failed to act on the report of the new job.

The next question is whether the error changed to client error, and if so, when. I conclude that the error changed to client error when petitioner's [REDACTED] income rose above \$2,116 in December, 2013. Petitioner's monthly [REDACTED] income was \$1,800 or below in October and November, 2013, and even if it was added to the part-time income from Interim, total income likely was below the reporting threshold. However, petitioner's [REDACTED] income increased to \$2,194 in December, and at that point she should have reported the increase to the county. Even though she reported the job in September, the increase in December should have triggered a report of increased income, and that clearly was a change that would have affected petitioner's BC+ eligibility as set out Wis. Stat., §49.497(1)(a)2 cited above.

Therefore, petitioner is responsible for the overpayment beginning February 1, 2014 and thereafter. She should have reported the increased income by January 10, 2014, and benefits would have been affected beginning in February. The client error continues even with petitioner's March, 2014 report that she was working at [REDACTED]. It is true that the overpayment for the months after that report were caused primarily by the employer filing a verification report that petitioner worked 40 hours per week, when in actuality she worked substantial overtime. However, had petitioner reported the increased income by January 10 as required, the county worker would have known in March that petitioner worked overtime, and the worker could have inquired further after receiving the employer verification. Thus the overpayment remained client error after the March, 2014 report.

CONCLUSIONS OF LAW

1. Petitioner was overpaid BC+ from September 1, 2013 through October 31, 2014.
2. The overpayment for the period September 1, 2013 through January 31, 2014 is not recoverable because it resulted from agency error.
3. The overpayment for February 1, 2014 and thereafter was caused by petitioner failing to report an increase in income above the reporting threshold and thus is recoverable.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind the BC+ overpayment claim for the months of September, 2013 through January, 2014, and to cease recovery of that portion of the overpayment. The county shall take this action within 10 days of this decision. The portion of the overpayment claims for the period February 1 through October 31, 2014, is upheld and the county may continue recovery of it. The county shall inform petitioner of the revised overpayment amount, also within 10 days 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 Madison,
Wisconsin, this 3rd 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 3, 2015.

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