



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/162767

PRELIMINARY RECITALS

Pursuant to a petition filed December 19, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 13, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly established a BadgerCare (BC) Plus overpayment in the amount of \$11,865.99 for the period from November 1, 2008 through December 31, 2008 and January 1, 2010 through April 30, 2010, and July 1, 2010 through June 30, 2013.

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: Pamela Hazley

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner received medical assistance in the amount of \$11,865.99 during the overpayment periods of November 1, 2008 through December 31, 2008 and January 1, 2010 through April 30, 2010, and July 1, 2010 through June 30, 2013.
3. While receiving medical assistance the petitioner failed to report that she owns approximately five homes or duplexes in the City of Milwaukee. The agency discovered that the petitioner owns five homes or duplexes. The agency then sent the petitioner notice that she needed to verify her actual income from her real estate holdings. The verification was due by October 29, 2014. The petitioner failed to provide verification within the specified 10 day time period.
4. On December 19, 2014 the Division of Hearings and Appeals received the petitioner's request for fair hearing.
5. Prior to the fair hearing, the petitioner provided tax returns from 2008, 2009, 2010, and 2011. All the tax returns contained net losses. The net losses were as follows:
 - a. 2008 - A net loss of \$1,484.00.
 - b. 2009 - A net loss of \$2,520.00.
 - c. 2010 - A net loss of \$5,116.00.
 - d. 2011 - A net loss of \$1,771.00.
6. Following the hearing the record remained open for both the agency and the petitioner to submit additional exhibits. The petitioner submitted tax returns with schedules attached for 2008, 2009, 2010, and 2011. The petitioner stated that she had not yet filed tax returns for 2012, 2013, and 2014. In lieu of tax returns, the petitioner submitted the Department of Health Services', Self-Employment Income Report forms for 2012, 2013, and 2014. The Self Employment Income Report forms showed the following losses:
 - a. 2012 - A net loss of \$3,612.00.
 - b. 2013 - A net loss of \$4,795.00.
 - c. 2014 - A net loss of \$26.
7. The agency did not submit any additional exhibits or information.
8. The petitioner did not claim any depreciation for her business.

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 MA Handbook, Appendix 6.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by the agency error are not recoverable.

An appeal of negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5). The agency does not allege that the petitioner's appeal was untimely in this case.

The only issue in this case is whether or not there was an overpayment. The agency contends that the petitioner failed to report self-employment income. The petitioner argues that she did not have any self-employment income, and that her real estate generated losses. The petitioner presented tax returns and Self Employment Income Report forms showing losses every year from 2008 through current. I have reviewed those forms, and I have some serious questions regarding the credibility of these documents. However, these documents show losses.

I note that the BadgerCare Plus regulations require depreciation to be added to a person's income when determining a person's self-employment income. Wis. Stat. § 49.471(7)(a)1. Thus, a person's income for FS purposes can be higher than the income reflected on a person's tax return. *Id.* In reviewing the petitioner's tax returns, I specifically reviewed depreciation, and found that the petitioner did not claim any depreciation.

The agency has chosen to ignore the petitioner's tax returns and self-employment report forms because she failed to provide these documents within a 10 day verification period. A 100% overpayment is not the proper remedy for failing to provide verification within a 10 day time period when an overpayment has not yet been established.

I have reviewed all of the evidence that the agency submitted. The agency fails to demonstrate what additional income if any the petitioner received during the overpayment periods. 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.

In the agency's exhibits there is a print out from another FS recipient's case showing that this other FS recipient reports an address of a building owned by petitioner and a rent cost of \$750. The handwritten note on the exhibit indicates that this is from July 2013 through current. The petitioner's son has also reported an address of one of the petitioner's properties with a rent cost of \$530. The handwritten time period is listed as March 5, 2010 and March 2012 through current. The agency also includes exhibits showing some of the buildings, vacant and/or boarded up. The agency was unable to state an actual income figure for the petitioner during this time period. Rather, the crux of the agency's case is that the petitioner owns approximately five homes and/or duplexes in the City of Milwaukee that she never reported owning. These facts alone are not enough to demonstrate a 100% overpayment.

I encourage the agency to work with their legal counsel to investigate this case further. However, at this time the best evidence is that the petitioner's business was losing money. Even if the petitioner was collecting rent from some of her buildings during some of the overpayment that is not enough to show that the losses she has claimed are inaccurate because the petitioner also has expenses she has claimed.

CONCLUSIONS OF LAW

The agency incorrectly determined that the petitioner was overpaid \$11,865.99 in BC Plus benefits for the period from November 1, 2008 through December 31, 2008 and January 1, 2010 through April 30, 2010, and July 1, 2010 through June 30, 2013.

THEREFORE, it is

ORDERED

That BC Plus overpayments for claim numbers [REDACTED] (\$3,395.31), [REDACTED] (\$3,183.44), [REDACTED] (\$701.48), [REDACTED] (\$798.72), and [REDACTED] (\$3,787.04) are reversed and rescinded in their entirety, and the Department is to cease all collection activities based upon them. The Department has 10 days to comply with this order.

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 9th day of February, 2015

\sCorinne Balter
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 9, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability