



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

MOP/163435

PRELIMINARY RECITALS

Pursuant to a petition filed January 23, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Vilas County Department of Social Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on May 20, 2015, by telephone. Hearings set for March 11 and April 21, 2015, were rescheduled at the petitioner's request.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid \$8,162.63 in MA benefits from December 2013 through May 2014.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact

Respondent:

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

By: [Redacted], Resolution Coordinator
Vilas County Department of Social Services
330 Court Street
Eagle River, WI 54521

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Vilas County.
2. BCP is a variant of Medical Assistance in Wisconsin for low-income residents who are not disabled or elderly. The petitioner had an ongoing BCP case from at least September 2013

through May 2014. At his September 2013 periodic review, he correctly reported that he had begun a new job, working 18 hours weekly. He submitted his last four pay stubs as income verification. The verified earnings amount of \$1,501.92 plus his daughter's Social Security Survivors benefit of \$840, created total gross monthly household income of \$2,341.92. That income amount is at 181% of the federal poverty level (FPL) in 2013, for a household of two persons.

3. The Department mailed an eligibility confirmation notice (*About Your Benefits*) to the petitioner on September 26, 2013. On page five of that notice, it advises the petitioner to report to the agency by the 10th of the next month if his household gross income exceeds **\$2,391.13** (200% FPL). See, Exhibit 1.
4. The petitioner began working around 40 hours weekly in October, 2013. As a result, the household income went over \$2,391.13 in October, which should have been reported in November, and would have caused his BCP coverage to end December 1, 2013. The petitioner did not report the increased employment income until May 2014.
5. The household's total gross income was \$3,375.575 in October 2013, and remained at or above that level. In April 2014, the combined income was \$4,070.20, which is at 310% FPL.
6. The petitioner was not eligible for BCP for himself from December 2013 through May 2014. The higher income also meant that the petitioner should have paid a monthly premium for his daughter's BCP coverage from December 2013 forward. (Minors can continue to be BCP eligible above 200%, but a premium is due). On December 29, 2014, the Department issued a *Medical Assistance/BadgerCare Plus Overpayment Notice* to the petitioner, stating that he had been overpaid \$8,162.63 for the December 1, 2013 through May 2014, period. Exhibits 6,7. The BCP program paid a monthly HMO capitation fee and other charges on his behalf during these months. The charges for the petitioner totaled \$7,684.51 (claim # Redact), and for his daughter, \$478.12 (claim # Redact).

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

49.497 Recovery of incorrect medical assistance payments. (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.

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

(emphasis added)

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook(BCPEH)*, §28.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a “no eligibility” case, to base the overpayment determination on the actual MA/BCP charges paid. *BCPEH*, §28.1. See also, § 28.4.

In this case, the agency asserts that the petitioner failed to report increased work hours and, subsequently, the increase in his household income to above the 200% of the federal poverty level (FPL) for the overpayment months. When his income exceeded 200% FPL, she was not eligible for adult benefits. Wis. Stat. §49.471(4)(a). Based on his undisputed excess income, the agency came up with the overpayment amount. The petitioner does not challenge the agency’s arithmetic, but does assert that the overpayment was not intentional.

The BCP statute requires the recipient to report changes that might affect eligibility:

(6) MISCELLANEOUS ELIGIBILITY AND BENEFIT PROVISIONS. ...

(h) Within 10 days after the change occurs, a recipient shall report to the department any change that might affect his or her eligibility or any change that might require premium payment by a recipient who was not required to pay premiums before the change.

Wis. Stats. §49.471(6)(h). See in accord, *BCPEH*, §27.2-.3. Thus, the existence of the timely reporting requirement is clear. When a recipient’s income exceeds 200% FPL, s/he is no longer financially eligible for BCP. There is no dispute that the petitioner failed to timely report his increased income, and that the increase made him ineligible.

The petitioner testified that he missed the reporting language in his September 2013 eligibility notice. There is no apparent agency error in this overpayment. He also stated that he does not have the means to pay such a large amount of money back. The agency shall re-send him a Repayment Agreement after this Decision is issued. Repayment is possible at the level of \$20 monthly, per the agency worker at hearing.

CONCLUSIONS OF LAW

1. The petitioner failed to timely report his increased income in October 2013, resulting in the creation of a BCP overpayment.
2. The county agency correctly determined that the petitioner was overpaid \$8,162.63 in BCP fees during the September through May 2014, period.

THEREFORE, it is

ORDERED

That the petition is 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 22nd day of May, 2015

\sNancy J. Gagnon
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 May 22, 2015.

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