



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

MOP/163747

PRELIMINARY RECITALS

Pursuant to a petition filed January 29, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regards to overpayments of Medical Assistance, a telephone hearing was held on February 25, 2015, at Milwaukee, Wisconsin. At the request of the county agency, the record was held open for the submission of additional information, which has been received.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid a combined total of \$1,063.57 of BadgerCare+ Medical Assistance in February & March, 2014 due to client error by under-reporting income.

There appeared at that time and place 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], Recovery Specialist
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County. She received BadgerCare Plus coverage in February & March, 2014.
2. The petitioner's gross earned income was reported by her on at least January 28, 2014, in a phone contact with the agency, to be weekly pay of 40 hours times \$10.50 per hours. See, Exhibit #1, Case

Comments for 01/28/14. The petitioner restated this rate of pay to the county's child care agency unit on February 24, 2014. The petitioner did not affirmatively report that she was eligible to receive, and/or receiving bonus or commission from her employer, **Redact**.

3. In February, 2014, the MA Program paid the petitioner's capitation rate cost of \$97.53 on her behalf, and \$662.63 in MA covered reimbursements on her behalf. See, Exhibit #4.
4. In March, 2014, the MA Program paid the petitioner's capitation rate cost of \$97.53 on her behalf, and \$205.88 in MA covered reimbursements on her behalf. See, Exhibit #4.
5. On September 18, 2014, the Department of Health Services, by the Milwaukee Economic Support unit, received a State Wage Record crossmatch alert from the Department of Workforce Development indicating that the petitioner had been receiving earnings in the second quarter of 2014 that exceeded the income previously reported by her. See, Exhibit #1, attached Case Comments for September 18, 2014.
6. On or about November 26, 2014, the Department requested verification of the petitioner's wages from the Equifax Work Number commercial database. An earnings report of her gross wages weekly was received on that date demonstrating her actual gross earned income from wages while employed by **Redact** between November 14, 2013, and November 14, 2014. These gross wages substantially exceeded the income reported and verified by the petitioner at her most recent review because her review did not include bonus wages she was receiving.
7. The petitioner's gross earnings from **Redact**, including commissions, were \$4,143.75 in February, 2014; and \$3,830.67 in March, 2014. See, Exhibit #1, pp. 9-11.
8. On December 19, 2014, the Department issued a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice informing the petitioner that it had determined she had been overpaid \$868.51 in the period of February & March, 2014, due to her client error in failing to report household income exceeding program limits. In addition, the Department issued a second Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice informing the petitioner that it had also determined she had been overpaid an additional \$195.06 in the period of February & March, 2014, due to her client error in failing to report household income exceeding program limits. The \$868.51 overpayment was due to medical expenses paid by MA/BadgerCare Plus in February & March, 2014 [$\$662.53 + \$205.88 = \$868.51$]; the \$195.06 overpayment was due to the capitation rate paid for the petitioner's individual eligibility in February & March at the rate of \$97.53 per month times 2 months [$\$97.53 \times 2 = \195.06]. See, Findings of Fact Nos. 3 & 4, above. A third document entitled a Medicaid Overpayment Notice, with an Overpayment Attachment demonstrating the calculations of the overpayment, was also issued on or about December 18, 2014, informing the petitioner that she had been determined overpaid a total of \$1,063.57 of MA/BadgerCare in the period of February & March, 2014, combined, due to recipient error. [$\$868.51 + \$195.06 = \$1,063.57$]. See, Exhibit #4.
9. On January 7, 2015, the petitioner called the Department's income maintenance unit to inquire about the Medicaid overpayment assessed against her and she was informed that "even if she did not use medical the state still paid a cost to have her enrolled, informed that she did not provide separate check showing commission/bonus even with ytd being listed-agency many not have noticed that information." See, Exhibit #2, additional Case Comments for January 7, 2015, run on 3/3/15.
10. On January 29, 2015, the petitioner again called the Miles Central Call Center to request a fair hearing, and Call Center informed her that she needed to do so in writing and it would mail a fair hearing request form to her, which it did that day. See, Exhibit #2, additional Case Comments for January 29, 2015, run on 3/3/15.
11. On February 6, 2015, the petitioner came to the Miles agency questioning the date of the overpayment, and was sent to Room 106 where eligibility was run again and there were no changes or updates as she was found ineligible.

12. On February 6, 2015, the petitioner delivered a Request for Fair Hearing form, signed by her and dated February 6, 2014, dated-stamped "Milwaukee DPU Received February 6, 2015", requesting a fair hearing from the Division of Hearings & Appeals contesting adverse action taken "12/2014", i.e., contesting Medical Assistance overpayment and child care overpayment.
13. On February 6, 2014, the MilES agency faxed the petitioner's Fair Hearing Request form to the Division of Hearings & Appeals.

DISCUSSION

An appeal contesting a negative action taken by the Department or its agents against an applicant, recipient or former recipient of Medical Assistance, including BadgerCare Plus, must be filed within 45 days of the effective date of the negative action. See, Wis. Stat. §49.45(5); Wis. Admin. Code §HA 3.05(3). An overpayment determination is such a negative action, and it is effective on the date of the notice of the overpayment. Service of such a notice is effective on the date of mailing. Here, that date was December 19, 2014.

After the hearing, I reviewed the Case Comments of record in the CARES computer database for the petitioner's case for the period of December 18, 2014, to March 3, 2015, and it is clear that she received the Notices of the MA overpayment determination, as well as of the companion notice of the Child Care overpayment that is being reviewed in a separate appeal hearing and file, soon after these notices were mailed. I take administrative notice of the additional Case Comments as Exhibit #10.

The two Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice(s) specifically informed her that she must file an appeal to contest the Medicaid overpayments by February 2, 2015. The Case Comments also reveal that on January 29, 2015, she called the agency and expressed a desire to appeal, and she was informed by the agency in reply that it would mail a request form to her, which it did. See, Exhibit #10, Case Comments for January 7, 2015 and January 29, 2015. Thereafter, Case Comments reveal that she appeared at the agency in person on February 6, 2015. See, Exhibit #10, Case Comments for February 6, 2015. The petitioner's own Request for Fair Hearing, on file with DHA, was received by the Division of Hearings & Appeals by fax transmission from the MilES agency on February 6, 2015, and bore the signature of the petitioner and a date she affixed of "2/6/14", and which also bore a date-stamp from the agency of "Milwaukee DPU Received February 6, 2015".

The Department of Health Services' written policy for social service program categorical hearings, like Medicaid overpayments, specifically provides in the relevant part as follows:

The **member** or his/her representatives for BC+, MA, FS and Refugee Assistance Program (RAP) may request a hearing. When a request is made orally, **provide the customer the option to put the request** in writing immediately. If it's made in person, have the **member** sign the **Request for Fair Hearing form**. Forward all hearing requests to DHA. DHA will schedule a hearing upon receipt of the hearing request.

Members should use the [Request for Fair Hearing](#) form. S/he should send it to the Wisconsin Department of Administration, Division of Hearings and Appeals.

NOTE: Fair hearing requests must be made in writing for:

1. BadgerCare Plus
2. Medicaid
3. RAP
4. Child Care participants and providers (3.3.4).
5. SeniorCare participants (3.3.5).

Income Maintenance Manual, §3.3.1.

The Division's administrative rules for social service program categorical hearings, including Medicaid overpayments, specifically require that an oral request (other than for a FoodShare appeal hearing) must be reduced to writing and signed by the petitioner. Wis. Admin. Code §HA 3.05(2)(a). Further, the rules provide that an appeal "shall be considered filed on the date of actual receipt by the division or the agency". See, Wis. Admin. Code §HA 3.05(3)(c).

The timeliness issue here is very close indeed. The petitioner knew the deadline via the notice, and the methods for appealing, and yet no paper request was received until February 6. However, the Case Comments make it clear that she requested a hearing on January 29, 2015, and these notes do not reveal that the agency gave her an option to immediately reduce her request to writing. Rather, it mailed the form, delaying receipt to a date on or about the deadline. I conclude that the petitioner did just enough to have articulated an appeal on January 29, 2015, and the agency did not reply correctly. I have jurisdiction to reach the merits here under these facts and this program because I find the filing date was January 29, 2015, not February 6, 2015. I turn now to the merits of the Medical Assistance overpayments raised by this appeal.

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).

Medical assistance recipients, including BC+ recipients, must report relevant changes to the agency within 10 days. Wis. Admin. Code § DHS 104.02(6); *BadgerCare + Eligibility Handbook* § 27.3; Exhibit #6. The petitioner received BadgerCare Plus, the medical assistance program for those whose income is below the federal poverty level who are not elderly or disabled. Wis. Stat. § 49.471. Because eligibility depends upon countable income vis á vis the federal poverty level, recipients must report when their income exceeds the eligibility limit. *BadgerCare + Eligibility Handbook* § 27.3; Exhibit #6. The county agency alleges that from February 1 – March 31, 2014, the petitioner received \$1,063.57 more in BadgerCare Plus benefits than she was entitled to because she failed to report that she was receiving substantial additional commission income payments from her employer. The Department may recover medical assistance overpayments that occur because the recipient fails to report any change in her situation that would have affected her eligibility for benefits. Wis. Stat. § 49.497(1).

In doing so, BadgerCare Plus overpayments are calculated for ineligible households by adding all medical expenses and capitation rate fees paid on behalf of the household and then subtracting any premiums the household has paid while incorrectly receiving benefits. *BadgerCare Plus Handbook*, § 28.4.2.

Here, the agency evidence is that the petitioner reported her wages at Redact were based upon 40 hours per week, i.e., a full-time job, at \$10.50 an hour, or \$420 per week, or \$1,680 per month gross. See, Exhibit

#1, Case Comments of February 24, 2014, and of January 28, 2014; and see also corroborating, Exhibit #8, at p. 5 SMRF corroborating hourly wage.

The evidence also shows that on April 1, 2014, the petitioner came to the agency and provided paystubs verifying her wages at this level.

In September, 2014, SWICA crossmatch (a/k/a, the “State Wage Record”), however, showed the petitioner’s gross earnings at [Redact] were \$8,209.82 in the 2nd Quarter of 2014, or an average of \$2,736.60 per month, substantially more than the agency was budgeting based upon the petitioner’s ongoing paystubs. This caused the agency to obtain a report of the petitioner’s actual earnings from the Equifax Work Number data service. This source revealed that the petitioner’s *actual* gross earned income at [Redact] was considerably higher still, i.e., \$4,143.75 in February, 2014; and \$3,830.67 in March, 2014. See, Exhibit #1, pp. 9-11. In addition, the petitioner also was receiving child support for her minor child of an average of \$415 per month in 2014. See, Exhibit #1, attached KIDS statement.

In February & March, 2014, the petitioner headed a two person household, and the income limit for BC+ for a two person household was \$1,292.50 at that time, based upon the then prevailing 2013 standards. See, *BadgerCare+ Eligibility Handbook*, § 50.1, Release 13-02. Be given her [Redact] based earned income alone the petitioner was 3 times over the income limit at a minimum in the tested period.

The petitioner raises three defenses. First, she asserts that the additional income beyond her hourly wage times 40 hours per week was due to commissions which were fluctuating and unpredictable. Second, she assert that she implicitly reported the commissions income when she provided paystubs that showed her hourly wage (at the hourly rate) in February, 2014, that also had a notation for year-to-date earnings that would have include her commissions year-to-date. Third, she asserts that she informed the agency that she no longer wanted BadgerCare coverage for herself, but just for her child, on multiple occasions purportedly in February and March, 2014.

These defenses do not undercut the agency determination. First, while the petitioner did clearly tell the agency in November of 2014 that she was earning commissions that fluctuated, there is no evidence that establishes that she did any more than submit paystubs in the past with present pay period earnings that happened to have year-to-date figures on them that would have included the commission earnings. This is a disingenuous argument. The gross earnings reported on the stub for the relevant prior 30 days are what the Department directs be used and what the worker is looking for. No reliable current wage can be derived from an average of year-to-date accrued earnings, and such a gross figure would not necessarily tell the agency that the petitioner was actually earning more than the paystubs *she was then providing* indicated her specific gross weekly wages as requested. That argument holds no logical weight and defenses one and two are both without merit. She had a duty to specifically report actual earnings *increases* above the eligibility limit, and she did not; and her argument that she impliedly or constructively reported her actual then-current income because her paystub had a year-to-date entry is not a clear report. It is merely sleight of hand, not an actual income report of her last 30 days of wages. Finally, I can find no reference in the Case Comments or any other testimony or documents that establishes that the petitioner ever requested that her BC+ be discontinued except her post-hearing open record submission in Exhibit #9, at p.4. This document appears to be sporadic excerpts (5 of 19 pages) from an Access online submission that bears a handwritten note (which could not be submitted online in this manner) that she no longer wished to have BC+ coverage for herself, only for her child. It was generated by Access on 2/25/2014 as a form. The Exhibit is also undated. She also submitted Exhibits #7[SMRF for Childcare] & #8 [SMRF for FS and Child Care], which bore Access online hallmarks showing they were generated on 2/20/2014 and say they were signed by her on 3/31/2014, and due by 3/31/2014.

I find the petitioner's testimony that she declined BC+ assistance at any before April 1, 2014, to be self-serving, evasive, uncorroborated by any reliable testimony or document, and wholly not credible.

The petitioner has not pointed to any error in the computations of her actual income or eligibility for BC+ in February & March, 2014, and I cannot find any error either. She had gross countable income, after the standard \$20 disregard, far, far in excess of the then prevailing gross income limit for a household of two persons; she was certified and receiving BC+; had expenses paid by BC+; and has not in any way credibly established that she reported her actual earnings over 100% FPL affecting February & March, 2014, BC+ benefits or that she declined aid in a clear manner prior to either month be certified and benefits paying out. The preponderance of the evidence in this record establishes that she was overpaid \$1,063.57 in Medical Assistance in February & March, 2014.

CONCLUSIONS OF LAW

The Department correctly determined that the petitioner was overpaid \$1,063.57 in Medical Assistance in February & March, 2014, because she failed to report that her income had increased above 100% of the Federal Poverty Level, and her actual income far exceeded the gross income limit for a household of 2 persons in those months.

THEREFORE, it is

ORDERED

That the petitioner's appeal 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 4th day of March, 2015

\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 4, 2015.

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