



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

MOP/163790

PRELIMINARY RECITALS

Pursuant to a petition filed February 09, 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 regard to Medical Assistance, a hearing was held on March 25, 2015, at Milwaukee, Wisconsin. The record was initially held open until April 20, 2015 for the submission of consecutive closing arguments to the Division of Hearings and Appeals (DHA). However, the record has been extended due to evidence that MES did not receive petitioner's initial closing argument until about April 16, 2015. As a result, MES' closing argument of April 22, 2015 is received into the record. However, Attorney Redact's April 23, 2015 objection that the agency's April 22, 2015 closing argument argued new 'facts' not already in evidence is sustained. MES' written response will only be accepted into the record in so far as the written argument applies to facts already established during the hearing or in the exhibits received into the hearing record (for example, not including allegations of future child care overpayment actions).

The issue for determination is whether Milwaukee Enrollment Services (MES) met its burden of proof to establish that it acted correctly to seek recovery from the petitioner of two BadgerCare Plus overpayments during the period of April, 2014 through October, 2014 of \$1,199.30 for petitioner's two children representing the premium amount for her two children, and a second BC overpayment of \$1,205.82 for petitioner herself based upon total ineligibility, due to alleged client error to fail to report her employment earned income commissions or overtime pay.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Petitioner's Representative:

Attorney Redact
Redact
Redact
Redact

Respondent:

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

By: Redact, IM advanced worker
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a resident of Milwaukee County.
2. The petitioner received BadgerCare Plus (BC) benefits for a group of three during the period of April, 2014 through October, 2014.
3. During the period after petitioner's October 24, 2013 telephone renewal, petitioner submitted an employer verification of earnings form (EVR) and three pay stubs from her employer, Redact. The November 4, 2013 employment form indicates that petitioner works 30 hours per week at \$10.92 per hour and also works overtime with varying hours earning \$16.38 per hour. That form also indicated that petitioner earns "commissions" with payouts that vary.
4. Based upon the employment verification form and her three paystubs, petitioner did report not only her base pay of \$10.92 per hour, but also her overtime pay and that she earned commissions.
5. Milwaukee Enrollment services (MES) mistakenly budgeted only \$655.20 every other week based upon 30 hours per week at \$10.92 per hour instead of including petitioner's reported overtime pay or commission for that period.
6. MES sent a November 7, 2013 Notice of Decision to the petitioner using only the petitioner's base pay to calculate her BC and FS benefits.
7. MES was unable to provide any evidence to establish that it requested from petitioner any additional verification, paystubs, or information to determine the petitioner's average amount of her overtime hours or earned commissions.
8. A MES worker received a September 23, 2014 email DCF fraud alleging that petitioner did not accurately report her total household income creating the possibility of overpayments.
9. During the hearing, MES stipulated in part that MES in error opened the petitioner's BC benefits as of February, 2014 so that it had no legal right to pursue any BC overpayment until April, 2014.
10. MES sent a January 13, 2015 BadgerCare (BC) Overpayment Notice to the petitioner stating that she received an overpayment of \$1,205.82 from net capitation during the period of April 1, 2014 through October 31, 2014 for the petitioner herself, due to petitioner failing to report her earned income resulting in household income exceeding income limits, due to client error.
11. MES sent a January 13, 2015 BadgerCare (BC) Overpayment Notice to the petitioner stating that she received an overpayment of \$1,199.30 during the period of February 1, 2014 through October 31, 2014 for unpaid premiums for her two children, due allegedly to petitioner failing to report her earned income commissions, due to client error.
12. During the hearing, petitioner did not contest the calculation of her household income for BC benefits purposes, but argued that the agency can not legally recover either of the petitioner's BC overpayments because both of those overpayments did not meet the requirements of Wis. Stat. §49.497 because those overpayment were due to agency error.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

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.

Pursuant to this grant of authority, the department's Medicaid Eligibility Handbook, Appendix 22.2.1.1, provides that counties are to initiate recovery of MA overpayments caused by:

1. Misstatement or omission of facts by a member, or any person responsible for giving information on the member's behalf, at a Medicaid application or review.
2. Failure on the part of the member, or any person responsible for giving information on the member's behalf, to report changes in financial (income, assets, expenses, etc.) or non-financial information that affects eligibility, premium, patient liability or cost share amount.

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

The central issue in dispute in this appeal was whether the petitioner's BC overpayments were due to agency or client error. Attorney Redact presented convincing testimony and evidence to establish that the petitioner did report that she earned overtime and commission income. See Findings of Fact #3 - #7 above. On page 2 of her closing argument, Ms. Redact argued correctly that: "Ms. Redact reported that she worked both overtime and earned commission. However, the agency used only her regular work hours, ignoring the other information provided. It failed to make any further inquiry to determine the average amount of Ms. Redact's overtime and commissions. That is how and why the overpayments occurred." During the hearing and in its closing argument, MES was unable to provide any persuasive testimony or evidence to refute or undermine the petitioner's argument that petitioner's BC overpayments were due to agency error.

A BadgerCare (BC) overpayment must be caused by the client's error because BC Overpayments caused by agency error are not recoverable. In this case, the petitioner persuasively established the BC overpayments were due to agency errors. As result, the county agency had no legal right to pursue the BC overpayments against the petitioner as explained in Findings of Fact #3 - #7 above, based upon the limitations for MA recover set forth in Wis. Stat., §49.497(1) and Medicaid Eligibility Handbook, Appendix 22.2.1.1.

Accordingly, based upon the above, I conclude that MES failed to meet its burden of proof to establish that it acted correctly to seek recovery from the petitioner of two BadgerCare Plus overpayments during the period of April, 2014 through October, 2014 of \$1,199.30 for her two children representing the premium amount for her two children, and a second BC overpayment of \$1,205.82 for petitioner herself based upon total ineligibility because those overpayment failed to meet the requirements of Wis. Stat., §49.497(1).

CONCLUSIONS OF LAW

1. Milwaukee Enrollment Services (MES) did not meet its burden of proof to establish that it acted correctly in seeking recovery from the petitioner of two BadgerCare Plus overpayments during the period of April, 2014 through October, 2014 of \$1,199.30 for petitioner's two children representing the premium amount for her two children, and a second BC overpayment of \$1,205.82 for petitioner herself based upon total ineligibility, because those overpayments were due to agency and not client error.
2. MES failed to establish a prima facie case that it was correctly seeking to recover alleged BC overissuances to the petitioner based upon the requirements of §49.497(1), Wis. Stats.

THEREFORE, it is

ORDERED

The matter is remanded to MES with instructions to cease and rescind all efforts to recover the alleged BC overpayments made to the petitioner during the period of April, 2014 through October, 2014 (as set forth in Findings of Fact #10 and #11 above), 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 Madison,
Wisconsin, this 28th day of May, 2015

\sGary M. Wolkstein
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 28, 2015.

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