FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/163892

PRELIMINARY RECITALS

Pursuant to a petition filed February 9, 2015, under Wis. Stat., §49.45(5), to review a decision by the Rock County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on March 25, 2015, by telephone.

The issue for determination is whether the county correctly determined a BadgerCare Plus (BC) MA overpayment.

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Mary Donahue
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Rock County.
2. Petitioner's children were covered by BC+ in 2013. In June, 2013, petitioner completed a review. On June 6, 2013, the county informed petitioner that the children were eligible for BC+ with a $69 premium. At that point the only income reported was petitioner's income from [redacted]. The notice told petitioner that he had to report to the county if monthly household income went above $5,743.75.

3. The agency received no reports of new income. In February, 2014, the county sent a notice to petitioner informing him of changes to BC+ effective April 1, 2014. The notice showed that the only income being budgeted was petitioner's income from [redacted].

4. On April 16, 2014, petitioner filed a change report on-line saying that his wife had returned to work in September, 2013. The county made changes effective May 1, 2014 based upon the report, and the worker then sent the file to the overpayment unit to determine if an overpayment occurred.

5. Using the income received by petitioner's wife from September, 2013 and after, the county determined that BC+ premiums would have been higher beginning November 1, 2013. By a notice dated January 29, 2015, the county informed petitioner that the household was overpaid $1,341.54 from November 1, 2013 through April 30, 2014, claim no. [redacted]. The overpayment was the difference between premiums that would have been owed had the income been reported timely and the premiums actually paid.

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 Handbook, App. 28.4.2 provides that if an overpayment is caused by a failure to report increased income, and the household would have remained eligible for BC+ but with increased premiums, the overpayment is the difference between the premiums originally paid and the correct premiums based on the actual income.

Petitioner testified that soon after his wife went back to work he called the state call center to report the change. He said he expected to get verification requests and was puzzled when he did not, but he assumed that the agency was handling the report.

The problem is that there is no record whatsoever of that call. Looking at the case notes dating back to petitioner's original application, there are numerous notes of calls from petitioner. It seems odd that a call as important as a report of increased income would not be recorded in the case notes. In addition, I

checked the document record; I note that petitioner regularly utilized the on-line Access system to report changes. Furthermore, there was a notice sent in February, 2014 that showed that the county still was budgeting only the [redacted] income, but petitioner did not file the change report until two months later.

The best evidence before me is that petitioner overlooked reporting his wife's return to work, and that he did not realize that he had done so until the following spring. I must conclude that the county correctly determined that an overpayment occurred and that petitioner is liable for it. I note that the result is not a penalty imposed on petitioner. Had the income been reported as petitioner testified, the BC+ premiums would have increased effective November 1, 2013. The "overpayment," therefore, is really a bill for the premiums that would have been owed based upon the household income after petitioner's wife returned to work.

CONCLUSIONS OF LAW

The county correctly determined a BC+ overpayment that occurred because increased income received by the household was not reported timely.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby 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 27th day of March, 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 March 27, 2015.

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