



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/163955

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Bayfield County Human Services in regard to Medical Assistance, a hearing was held on April 13, 2015, at Washburn, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of medical assistance.

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: Beulah Garcia

Bayfield County Human Services
117 East 5Th St
PO Box 100
Washburn, WI 54891-0100

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Bayfield County.
2. The petitioner completed her BadgerCare Plus renewal on June 11, 2013. Her income was \$2,927.54. She was informed that she must report if her household income exceeded \$3,055.68.

3. The petitioner began working as casual labor on July 2, 2013. Her household income exceeded \$3,055.68 from that month forward.
4. The petitioner called the number given in her notice to report that she had a new job and was told that she did not need to report anything else as long as she continued performing casual labor.
5. There are five persons in the petitioner's household.

DISCUSSION

The department may recover any overpayment of medical assistance that occurs because a "recipient" or anyone "responsible for giving information on the recipient's behalf" fails "to report any change in the recipient's financial ...that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements." Wis. Stat. § 49.471(10)(b)3; *BadgerCare Plus Handbook*, 19.1. Before April 2014, BadgerCare Plus provided medical assistance to children under 19 and their parents. Wis. Stat., § 49.471. Adults usually 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). After July 1, 2012, 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 the household income exceeded 200% of the federal poverty level. If the household's income changed enough to affect benefits, it had to report the change to the agency within 10 days. Wis. Admin. Code, § DHS § 104.02(6).

The petitioner renewed her BadgerCare Plus on June 11, 2013. Her monthly household income was \$2,927.54, and she was informed that she must report to the agency if that income exceeded \$3,055.68, which would put her over 200% of the federal poverty level and affect any premium assessed for her children. She began working as a casual laborer on July 2, 2013, which put her over the program's limit. After considering when she had to report this and when her benefits would have changed, the agency determined that she must repay \$4,498.47 in benefits she received from September 2013 through March 31, 2014. The petitioner does not challenge the agency's calculations but contends that she reported the change of income to the Call Center and was told that as long as she was engaged in casual labor, her benefits would not change.

The only issue that needs determining is whether the petitioner actually reported her change of income within 10 days of the end of July 2013 as she contends. The evidence is mixed. She testified that she called the number on the Notice of Benefits a couple of times right after she got a new job. However, the agency worker, Beulah Garcia, testified that the agency's notes do not indicate any call was made until March 31, 2014. These notes are regularly kept business records, and the lack of notation is relevant. But so is the petitioner's testimony, which appeared to be credible. In addition, the notes are only as good as the person taking them. Ms. Garcia testified that when a person calls the Call Center, the call rotates to workers in 12 different counties. If a worker took a call and did not make a note, there would be no way to determine who that worker is and thus no way to judge that particular worker's competence, an especially important consideration in the early days of the consortium. This is a close case, but the burden of proof is by the preponderance of the credible evidence, meaning that one side's position needs only to be slightly more likely than the other's. In this matter, I will accept the credibility of the petitioner's testimony as sufficient to meet that burden. Therefore, the agency cannot recover the overpayment.

CONCLUSIONS OF LAW

The county agency cannot recover an overpayment of medical assistance incurred by the petitioner from September 2013 through March 2014 because she notified the agency that she had new employment and the agency did not act on this information.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it remove the finding that the petitioner received more medical assistance than she was entitled to from September 2013 through March 2014 and that it take all steps necessary to ensure that it ends any attempt to recover benefits she received in this period.

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 13th day of April, 2015

\sMichael D. O'Brien
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 April 13, 2015.

Bayfield County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability