



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

MOP/164110

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Oneida County Department of Social Services in regard to Medical Assistance, a hearing was held on April 09, 2015, at Rhinelander, Wisconsin.

The issue for determination is whether the petitioner’s household was overpaid \$3,623.00 in BC+ due to not paying correct premiums during the period of March through August, 2013.

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]

Oneida County Department of Social Services
Oneida Avenue
PO Box 400
Rhinelander, WI 54501

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a resident of Oneida County.

2. Petitioner had an ongoing BC+ extension case in 2013. On January 22, 2013, the respondent sent notice to the petitioner's household, which included a requirement to report gross monthly income exceeding \$4,802.08. Exhibit 2.
3. Petitioner's household gross income in January, 2013 was \$5,328.68. Exhibit 4. The petitioner did not report income exceeding \$4,802.08 to the respondent.
4. In March, 2014, the respondent received notice of a possible discrepancy between petitioner's reported household income and wages reported by petitioner's employer.
5. Petitioner's household monthly income between March, 2013 and August, 2013, averaged well above the \$4,802.08 mandatory reporting amount. See, Exhibit 4.
6. The respondent determined that petitioner should have been paying BC+ premiums much higher than the original premium of \$225.00, based upon actual household income.
7. Petitioner was informed that he was liable for an overpayment of \$3,623.00 in BC+ due to not paying correct premiums during the period of March through August, 2013 (claim no. Redact), by a notice dated February 5, 2015. Exhibit 4.

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, § 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable. If the overpayment is caused by the failure to report income accurately, the claim will be the amount of the premium that would have been paid had the income been reported correctly. If the household would have been over even the premium limit, the overpayment would be all MA payments made on the household's behalf. See BC+ Handbook, § 28.4.2.

Under BC+ rules in 2013, caretaker parents were ineligible if income was more than 200% of the federal poverty level (FPL). If income was between 133% and 200%, the parents were eligible but had to pay a premium. BC+ Handbook, § 19.1.

At some point in January, 2013, petitioner's household income rose above the \$4,802.08 reporting threshold, presumably because petitioner was earning more commissions. Petitioner's pay is entirely commission based, though he does receive a regular draw against those commissions. The respondent

maintains that petitioner should have reported the increased income in February at the latest, and the respondent therefore calculated the overpayment as commencing in March, which is when a February reporting would have gone into effect. It is clear that petitioner's household income was above the \$4,802.08 reporting threshold thereafter, and the county correctly established that petitioner should have been paying higher premiums. I note that the Employer Verification Form provided in March, 2013, very clearly illustrates the petitioner's wages in the form of draws and commission checks. I have reviewed the respondent's calculations, and have found no error.

The petitioner does not dispute the actual household income, but argues that the respondent should have caught this wage discrepancy earlier. I find that argument to be specious, at best. The petitioner had been informed of the reporting requirements, and failed to comply with the obligations thereunder. Had petitioner timely informed the respondent of the increased household income, no overpayment would have occurred. And the amount of the income discrepancy is so large that I find it difficult to accept the petitioner's argument that *the respondent* should have caught this sooner. The petitioner reported household income of 3,882.28 in March of 2013; as of May, 2013, petitioner's actual household income was \$9,400.86. Such a substantial increase could have hardly gone unnoticed by the petitioner.

The petitioner also raised an issue regarding an incorrect attribution of earned income to him from another employer. The respondent explained that that attribution was in error, the error was corrected, and none of the incorrectly attributed income was considered in determining the instant overpayment. The records demonstrate that the only earned income budgeted for petitioner was from Rhinelander Chrysler, Dodge, Jeep.

I conclude that the county correctly established the overpayment.

CONCLUSIONS OF LAW

Petitioner is liable for an overpayment of \$3,623.00 in BC+ during the period of March through August, 2013, due to failure to report accurate household income.

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 8th day of May, 2015.

\sPeter McCombs
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 8, 2015.

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