



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/164230

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on March 18, 2015, at Madison, Wisconsin.

The issue for determination is whether the petitioner was overpaid MA/BCP benefits for a child from August through December 2014.

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: Megan Thurston, Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. The petitioner received BCP as a household of two persons from at least December 2013 through March 2014 (when the adult BCP ended). The household's child continued to be covered by MA/BCP through December 2014.
3. On February 19, 2015, a *Wisconsin MA and BCP Overpayment Notice* and worksheets were sent to the petitioner, advising that she had been overpaid \$166.00 in BCP for the child for the 8/1/14 – 12/31/14 period (claim # [REDACTED]). Exhibits 11, 15. The overpayment was due to solely client error for under-reporting income from August 2014 forward.
4. The petitioner worked at [REDACTED] from at least December 2013 forward throughout the overpayment period. She was required to report earnings increases above a set threshold within 10 days of occurrence. The Department included reminders of the reporting threshold and 10-day rule on notices issued to the petitioner throughout the year. She did not report exceeding the threshold at any time during 2014.
5. In conjunction with a December 2013 Six Month Report Form, the petitioner submitted paystubs correctly showing her hourly rate of pay as \$13.00. An agency worker incorrectly entered her hourly wage as \$10.50. However, the petitioner also erred at that time, because she did not mention her bonus checks. The petitioner's case underwent an annual review on May 20, 2014, at which time verification of her last 30 days' pay was requested. The petitioner submitted three paystubs, and the agency worker correctly entered the hourly rate of \$13.00, times 40 hours weekly. However, the petitioner did not submit two bonus checks received during the requested period, making the overpayment completely client error from that point forward. The petitioner grossed \$3,673 in July, \$3,989 in August, \$3,805 in September, \$4,070 in October, \$3,239 in November and \$3,050 in December 2014.
6. The agency learned of the petitioner's excess 2014 income when it received an employer wage match report from the Wisconsin Department of Workforce Development in 2014. When the petitioner's correct earnings amounts were entered in the BCP case, the results were that she should have been liable for the child's actual August charges (\$97.53) and monthly premiums (ranging from \$15 to \$64, depending on income) from September through December 2014. She actually paid no premiums during these months, so the premium liabilities are now an overpayment.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

49.497 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.

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

(emphasis added)

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook(BCPEH)*, §28.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a "no eligibility" case, to base the overpayment determination on the actual MA/BCP charges paid, including HMO premiums. *BCPEH*, § 28.4.

In this case, the agency asserts that the petitioner failed to report bonus income which increased in her income to above the 200% of the federal poverty level (FPL) for the overpayment months. When her income exceeded 200% FPL, she needed to pay a premium for her child's benefits. Wis. Stat. §49.471(4)(a). The unpaid premium liabilities are overpayments. If income exceeds 300% FPL, the child has no eligibility, and actual charges paid becomes the measure of the overpayment. Based on her undisputed excess income, the agency came up with the overpayment amount. The petitioner does not challenge the agency's arithmetic, but does assert that the overpayment was not intentional.

The BCP statute requires the recipient to report changes that might affect eligibility:

(6) MISCELLANEOUS ELIGIBILITY AND BENEFIT PROVISIONS. ...

(h) Within 10 days after the change occurs, a recipient shall report to the department any change that might affect his or her eligibility or any change that might require premium payment by a recipient who was not required to pay premiums before the change.

Wis. Stats. §49.471(6)(h). See in accord, *BCPEH*, §27.2-.3. Thus, the existence of the timely reporting requirement is clear. When a recipient's income exceeds 200% FPL, she must report the income and pay the premiums for a child's BCP. The petitioner's defense was that she did not multiply out her hourly wages to see if they matched the gross wage totals declared on the multiple benefit notices that she received. That is not a persuasive explanation. A person is presumed to know what her gross income is. She is in a better position to know her gross income in "real time" than the Department, which is part of why reporting requirements exist. The Department is only able to receive the employer's quarterly wage reports several months after the income is paid to the worker. I conclude that overpayment recovery is appropriate.

CONCLUSIONS OF LAW

1. The petitioner failed to timely report her increased (bonus) income, resulting in the creation of a BCP overpayment.
2. The county agency correctly determined that the petitioner was overpaid \$166.00 in BCP fees during the August through December 2014 period.

THEREFORE, it is

ORDERED

That the petition 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 31st day of March, 2015

\sNancy J. Gagnon
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 31, 2015.

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