



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



AMENDED DECISION

MOP/164643

PRELIMINARY RECITALS

Pursuant to a petition filed March 16, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on April 16, 2015, at Waukesha, Wisconsin. On June 9, 2015, a decision was issued by the Division of Hearings and Appeals. The Conclusions of Law and Order in the decision are hereby amended in this Amended Decision.

The issue for determination is whether the agency properly seeks to recover an overissuance of BC+ benefits in the amount of \$14,554.79 for the period of March, 2011 – February, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Kathleen Jones

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waukesha County.

2. On August 30, 2009, the Petitioner submitted an online application for healthcare benefits. Under “Job Income Information” it states: “you told us that no one in your home has this kind of income, benefit, or bill.” She agreed, by signing the application, to report any changes in household income or employment to the agency within 10 days.
3. On February 24, 2011, the Petitioner completed an online renewal for BC+ Core. On February 25, 2011, the agency issued a summary of the information provided by the Petitioner. There is no information in the summary regarding income. The Petitioner signed and submitted the signature page to the agency on March 1, 2011.
4. On March 9, 2011, the agency issued a Notice of Decision to the Petitioner informing her that effective March 1, 2011, she was eligible for BC+ Core with no monthly premium. There is no information in the notice regarding the income the agency used to determine her eligibility and no reporting requirement regarding income.
5. On February 22, 2012, the Petitioner submitted an online renewal. No changes to income or employment were reported.
6. On February 29, 2012, the agency issued a Notice of Decision to the Petitioner informing her that she was eligible for BC+ Core benefits effective March 1, 2012 with no monthly premium. There is no information in the notice regarding the income the agency used to determine her eligibility and no reporting requirement regarding income.
7. On February 25, 2013, the Petitioner submitted an online renewal. No changes to income or employment were reported.
8. On February 28, 2013, the agency issued a Notice of Decision to the Petitioner informing her that she was eligible for BC+ Core benefits effective March 1, 2013 with no monthly premium. There is no information in the notice regarding the income the agency used to determine her eligibility. The notice also informed the Petitioner that if her household’s total monthly gross income goes over \$1,273.48, she must report it by the 10th day of the next month.
9. On February 11, 2014, the Petitioner submitted an online renewal. No changes to income or employment were reported.
10. On February 17, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she was eligible for BC+ Core benefits effective March 1, 2014 with no monthly premium. There is no information in the notice regarding the income the agency used to determine her eligibility. The notice also informed the Petitioner that if her household’s total monthly gross income goes over \$1,293.43, she must report it by the 10th day of the next month.
11. On February 9, 2015, in a phone conversation that took place during the Petitioner’s renewal process, the Petitioner reported self-employment income to an agency worker. On February 11, 2015, the agency issued a Notice of Proof Needed requesting verification of self-employment income.
12. On February 16, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her BC+ Core benefits would end effective March 1, 2015.
13. On February 19, 2015, the Petitioner submitted tax returns for 2009 – 2013. The tax returns show the following income from self-employment:

2009	\$27,660
2010	\$31,037
2011	\$31,449
2012	\$30,446
2013	\$26,684

14. On February 24, 2015, the agency issued a Medicaid/Badgercare Overpayment Notice to the Petitioner informing her that the agency intends to recover an overissuance of BC+ benefits in the amount of \$14,554.79 for the period of March, 2011 – February, 2015 based on Petitioner's failure to report earned income.

DISCUSSION

The Department may recover any overpayment of Medical Assistance that occurs because 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 [BadgerCare].
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.

Wis. Stat. § 49.497(1).

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

Medical assistance recipients, including BC+ recipients, must report relevant changes to the agency within 10 days. Wis. Admin. Code § DHS 104.02(6); BadgerCare + Eligibility Handbook § 27.3.

The agency seeks recovery of all monies paid out on Petitioner's behalf from the MA program for the period of March, 2011 – February, 2015. The basis for the agency's action is an allegation that the Petitioner did not report a change in household income or self-employment income in a renewal in February, 2011. In support of its action, the agency presented the initial application and the online renewal applications as evidence that the Petitioner did not report self-employment income. The agency also produced the Petitioner's tax returns for the years 2009 – 2013 to demonstrate that she did have self-employment income and demonstrate that her average monthly income would have exceeded the MA program limit.

The Petitioner testified that she initially applied for benefits in 2009 online. She stated that she spoke with an agency worker after filing her application and reported her self-employment during the phone interview. She testified that the agency worker asked her to supply her 2008 tax returns and that she provided them to the agency as requested. Because she assumed the agency had properly budgeted her income and because her self-employment income remained relatively constant, she did not report any changes in subsequent renewals. The Petitioner pointed out that notices issued to the Petitioner by the agency did not provide any information regarding how the agency had budgeted income or determined eligibility nor did they inform the Petitioner to report to the agency if her income went above 130% FPL until the notice dated February 28, 2013.

A. March 1, 2011 – February 28, 2013

The agency was unable to produce any documentation prior to 2011 with the exception of the Petitioner's 2009 application. Due to a change in document storage systems, any case comments or evidence of other

documents that the Petitioner may have submitted to the agency is unavailable. The Petitioner's 2009 online application indicates that no income was reported. There is no documentation of what was reported during the Petitioner's phone interview or what additional documentation the agency requested and Petitioner submitted.

The Petitioner's testimony that she reported her income during the phone interview and submitted her 2008 tax returns in response to the agency's request rebuts the agency's evidence. The Petitioner's testimony is credible in that it is standard procedure for the agency to schedule a telephone or face-to-face interview with an applicant after an initial application is filed and it is standard procedure for the agency to ask, during the phone interview, about income and request verification of it. Without additional information about the phone interview and submission of documents, including the 2008 tax returns, I am unable to determine whether the agency's finding that she was financially eligible for MA in 2008 was correct or, if incorrect, whether an incorrect determination was due to agency or client error. Without sufficient information regarding what was reported and submitted at the initial application, I am also unable to determine whether the Petitioner accurately reported no changes during subsequent renewals.

Therefore, based on the evidence presented, I conclude that the agency has not met its burden of establishing an overpayment based on client error for the period of March 1, 2011 – February 28, 2013.

B. March 1, 2013 – March 1, 2015

The Petitioner concedes that she did not report to the agency when her income exceeded 130% FPL after the February 28, 2013 notice. Based on the Petitioner's 2012 tax returns, her average monthly income at that time would have been budgeted as \$2,537. She was required to report that her income exceeded 130% FPL by March 10, 2013. This would have impacted her benefits beginning April 1, 2013. According to the Petitioner's tax returns, her average monthly income for 2014 and 2015 exceeded the program limit and she would not have been found eligible for MA benefits.

For the period of April 1, 2013 – March 31, 2015, I conclude the Petitioner failed to report that her income exceeded 130% FPL which would have resulted in the agency finding her ineligible for MA benefits. Therefore, I conclude that the agency properly seeks to recover all MA benefits issued on the Petitioner's behalf for that period.

The Benefits Paid reports submitted by the agency contain the amount of benefits paid for the periods of March 1, 2013 – February 28, 2014 and March 1, 2014 – February 28, 2015. Because the overpayment period started April 1, 2013, I am remanding the matter to the agency to determine the amount of the overpayment for the period of April 1, 2013 – February 28, 2015.

CONCLUSIONS OF LAW

1. The agency may not recover MA benefits issued to or on behalf of the Petitioner for the period of March 1, 2011 – March 31, 2013.
2. The agency may recover MA benefits issued to or on behalf of the Petitioner for the period of April 1, 2013 – February 28, 2015.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind its overpayment action against the Petitioner for the period of March 1, 2011 – March 31, 2013. The agency shall determine the amount of MA benefits paid to or on behalf of the Petitioner for the period of April 1, 2013 – February 28, 2015 and issue a new overpayment notice and worksheets/reports to the Petitioner.

The notice shall provide new appeal rights for the amount of the overpayment only. The Petitioner is precluded from re-litigating the issue of whether there is an overpayment based on failure to report household income over 130% FPL for the period of April 1, 2013 – February 28, 2015. These actions shall be completed 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 Milwaukee,
Wisconsin, this 1st day of July, 2015

\sDebra Bursinger
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 July 1, 2015.

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

