



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MOP/164771

PRELIMINARY RECITALS

Pursuant to a petition filed March 20, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on May 13, 2015, at Milwaukee, Wisconsin. A hearing scheduled for April 15, 2015, was rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid BCP benefits from March 2014 through November 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Milwaukee County.
2. BCP is a variant of Medical Assistance in Wisconsin for low-income persons who are not disabled or elderly. The petitioner was certified for BCP as a household of two persons (self and

minor child) from at least August 2013 through November 2014. Her case closed effective November 30, 2014, for failing to submit requested income verification.

3. The petitioner has been employed at [Redact fact] throughout the overpayment period. She was required to report significantly increased income within 10 days of receipt. She did disclose her [Redact fact] employment at her March 2014 periodic case review. However, she did not disclose that her gross earnings for February 2014 from [Redact] were \$1,784. At no time before November 2014, did she report earnings exceeding 100% of the Federal Poverty Level (FPL). She also failed to report that she began a second job (and its earnings) at [Redact] on March 10, 2014. *See*, Exhibit 1, p.85.
4. The agency learned of the petitioner's increased income when it received a tip and an employer wage verification form later in 2014. The agency discovered that the petitioner had increased income that exceeded the 100% FPL (\$1,310), which became the income limit for adult BCP eligibility in 2014. When her actual income was budgeted, the result was that the petitioner's household was not eligible for any adult BCP coverage from March through November 2014.
5. On March 12, 2015, the county agency issued a *Medical Assistance/BadgerCare Plus Overpayment Notice* to the petitioner, stating that she had been overpaid \$2,589.60 for the March 1 through November 30, 2014, period (claim # [Redact]). The BCP program paid a monthly \$315.20 HMO capitation fee (April – November) and other charges (March only) on her behalf during these months. Exhibit 1, pp. 137 – 148.

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. *BCPEH*, §§28.1- 28.4.

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.

In this case, the agency asserts that the petitioner failed to report increased wages and the commencement of a second job and, subsequently, the increase in her income to above the 100% of the federal poverty level (FPL) for the overpayment months. When her income exceeded 100% FPL, she was not eligible for benefits. Wis. Stat. §49.471(4)(a). 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.

When an adult recipient’s income exceeds 100% FPL, she is no longer financially eligible for BCP. There is no dispute that the petitioner failed to report her increased income in 2014, and that the increase made her ineligible. The petitioner claims that she did not realize she was over the limit because she does not receive a paper paystub. It is her responsibility to know her income level. There was no good explanation given for failing to report the second job. The agency may proceed with recovery.

CONCLUSIONS OF LAW

1. The petitioner failed to timely report her increased income in February 2014, resulting in the creation of a BCP overpayment.
2. The county agency correctly determined that the petitioner was overpaid \$2,589.60 in BCP benefits during the March through November 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 29th day of May, 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 June 1, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability