



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/165097

PRELIMINARY RECITALS

Pursuant to a petition filed April 06, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance, a hearing was held on April 23, 2015, at Milwaukee, Wisconsin. The record was held open post-hearing for 10 days to allow the Petitioner time to submit additional evidence. Petitioner submitted additional evidence on May 3, 2013. The record was closed at that time.

The issue for determination is whether the agency properly seeks to recover an overissuance of BC+ benefits in the amount of \$3,684 for the period of August 1, 2014 – April 30, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Kathy Yang

Manitowoc County Department of Human Services  
3733 Dewey Street  
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.

2. On or about May 30, 2014, the agency received an employer verification from Petitioner's wife's employer. The verification reports that Petitioner's wife works 40 hours/week at \$2.35/hour with bi-weekly tips of \$400.
3. On June 12, 2014, the agency issued a Notice of Decision to the Petitioner informing him that effective June 1, 2014, the Petitioner and his wife would receive BC+ benefits with no monthly premium. The eligibility determination was based on countable gross income that included only the Petitioner's wife's earned income. The notice informed the Petitioner to report to the agency if the household gross monthly income exceeded \$1,310.83 by the tenth day of the next month.
4. On June 30, 2014, the Petitioner obtained a new job.
5. On September 8, 2014, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would increase from \$232/month to \$247/month. The notice indicates that this determination was made based on earned income from Petitioner's wife. No other income was counted. The notice also indicates that there are no changes to healthcare benefits and the benefits are continuing.
6. On October 3, 2014, the agency received returned mail for the Petitioner. Per the forwarding information on the envelope, the agency updated the Petitioner's address and re-sent the returned mail.
7. On October 6, 2014, the agency issued a request for verification of mortgage/rent expense to the Petitioner at the new address in [REDACTED].
8. On November 18, 2014, the agency issued a Notice of Decision informing the Petitioner that his FS benefits would end effective December 1, 2014 due to non-completion of a FS renewal. The notice also informed the Petitioner that there are no changes to healthcare benefits and the benefits are continuing.
9. On March 18, 2015, the agency received an alert that there were discrepancies between the Petitioner's reported income and the wages reported to the state by Petitioner's employer.
10. On March 24, 2015, the agency received pay statements for the Petitioner for July, 2014 – March, 2015. The pay statements show the Petitioner's monthly gross earned income was \$3,500 for July, 2014, \$7,500 for October, 2014 and \$5,000/month for August, September, November and December, 2014, January, February and March, 2015.
11. For the period of August 1, 2014 – April 30, 2015, the agency paid a net capitation of \$2,098.23 for the Petitioner and \$2,288.63 for the Petitioner's wife.
12. On March 31, 2015, the agency issued a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment notice and Benefits Paid Medicaid Reports to the Petitioner informing the Petitioner that the agency intends to recover an overissuance of MA benefits in the amount of \$3,684.37 for the period of August 1, 2015 – April 30, 2015. The Benefits Paid Medicaid Reports indicate a total net capitation of \$4,386.86 was paid by the agency on behalf of the Petitioner and the Petitioner's wife for the period of August 1, 2014 – April 30, 2015. No revised overpayment notice was issued by the agency.
13. On April 6, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### 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).

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; Exhibit #6. The petitioner received BadgerCare Plus, the medical assistance program for those whose income is below the federal poverty level who are not elderly or disabled. Wis. Stat. § 49.471. Because eligibility depends upon countable income vis á vis the federal poverty level, recipients must report when their income exceeds the eligibility limit. BadgerCare + Eligibility Handbook § 27.3. The Department may recover medical assistance overpayments that occur because the recipient fails to report any change in her situation that would have affected her eligibility for benefits. Wis. Stat. § 49.497(1).

BadgerCare Plus overpayments are calculated for ineligible households by adding all medical expenses and capitation rate fees paid on behalf of the household and then subtracting any premiums the household has paid while incorrectly receiving benefits. BadgerCare Plus Handbook, § 28.4.2.

The agency presented evidence that the Petitioner's gross household income exceeded the eligibility limit in July, 2014. Specifically, the Petitioner had gross earned income of \$3,500 and his wife's earned income was calculated as \$1,176 for total gross monthly household income of \$4,676 for July, 2014. This exceeded the reporting requirement of \$1,310.83. Thus, the Petitioner was required to report the change in income by August 10, 2014. This would have affected his benefits beginning September 1, 2014. The evidence clearly establishes that Petitioner's gross monthly household income continued to exceed the eligibility limit for the period of August, 2014 – April, 2015.

The Petitioner testified at the hearing that he contacted the agency in June, 2014 to report his new job. He stated he was told that the agency would keep his healthcare case open in case he needed to reapply for coverage. The agency noted that the case comments do not reflect any contact by the Petitioner between early June, 2014 and March, 2015. The Petitioner was given time post-hearing to produce phone records or any other evidence that contact was made with the agency about reporting his new job. The Petitioner submitted an email on May 3, 2015 stating that he was unable to find any phone records due to changing cell phone numbers in June, 2014.

The preponderance of the evidence demonstrates the Petitioner did not properly report his new job and income to the agency. In September, 2014, mail issued by the agency to the Petitioner was returned with a new forwarding address. There is no indication that Petitioner ever contacted the agency to report a new address. The mail was forwarded to his new address. The notice that was forwarded to the Petitioner clearly indicates that the agency determined the Petitioner's benefits based only on the Petitioner's wife's earned income and that his healthcare benefits were continuing with no changes. There is no indication that the Petitioner tried to contact the agency in September or October to correct this information. There was no response by the Petitioner to the agency's October 6, 2014 request for mortgage/rent verification. There was also no response by the Petitioner to the November 18, 2014 notice from the agency that his healthcare benefits were continuing with no changes. The Petitioner's statement that the agency said they would keep his case open in case he needed to reapply is not credible in that there is no mechanism or procedure in place that would allow the agency to keep a case open for someone who is not financially eligible.

I also note that the agency may recover an overissuance of healthcare benefits even if the overissuance is the result of an agency error. Thus, even if the Petitioner did contact the agency to report his new job, the agency would be able to recover the overissuance.

The agency testified at the hearing that the overpayment notice of March 31, 2015 giving notice that the agency intends to recover \$3,684.37 is incorrect and that the actual overpayment for the period of August 1, 2014 – April 30, 2015 is \$4,386.86. The agency did not, however, issue a revised notice with the proper amount. The agency cannot recover an overpayment for which it has not provided proper notice, including the proper amount of the overpayment.

I am remanding this case to the agency to re-determine the amount of the overpayment based on an overpayment period of September 1, 2014 – April 30, 2015. Though the Petitioner started his new job sometime in June, 2014, the agency did not present evidence of the amount of Petitioner's earned income in June, 2014. Thus, there is insufficient evidence to establish that the Petitioner was required to report his change in income by July 10, 2014, to impact his benefits starting August 1, 2014. There is sufficient evidence to establish that Petitioner's income in July, 2014 exceeded the eligibility limit. The Petitioner was required to report that change by August 10, 2014. This would impact his benefits effective September 1, 2014. Thus the overpayment period should begin September 1, 2014.

A new notice must be issued with the correct overpayment period and amount as well as the appropriate worksheets or Benefits Paid Reports as well as repayment agreement documents. Petitioner may contest the new determination of the amount of the overpayment but not the Division of Hearings and Appeals determination that there is an overpayment for the period of September 1, 2014 – April 30, 2015. If he wishes to contest the instant determination that there is an overpayment, he must note the rehearing and circuit court appeal instructions below.

### **CONCLUSIONS OF LAW**

That the agency correctly concluded that Petitioner was overpaid BadgerCare+ benefits for the period of September 1, 2014 – April 30, 2015 for failing to correctly report his income but the amount of the overpayment must be redetermined.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to cease collection efforts for the overpayment involved here but redetermine the amount of the overpayment for the period from September 1, 2014 through April 30, 2015. A new notice must be issued to the Petitioner with the correct overpayment amount as well as the appropriate worksheets, Benefits Paid Reports and repayment agreement documents. This must be done within 10 days of the date of this Order.

In all other respects, this appeal 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 Milwaukee,  
Wisconsin, this 25th day of June, 2015

---

\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 25, 2015.

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