



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

MOP/165401

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2015, under Wis. Stat., §49.45(5), to review a decision by Milwaukee Enrollment Services to recover Medical Assistance (MA), a hearing was held on April 29, 2015, by telephone.

The issue for determination is whether the agency correctly determined an MA overpayment resulting from the failure to report an increase in income.

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted signature
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Milwaukee County.
2. Petitioner received BadgerCare Plus (BC+) MA for her son. On April 8, 2014, the agency sent petitioner a notice informing her that BC+ would continue for her son with no premium. The notice showed petitioner's monthly earned income to be \$2,300.80; the notice also told petitioner that she needed to report increased income if monthly income rose above \$2,425.04.

3. Petitioner's earned income in April, 2014 was \$2,585. She did not report the increase. Petitioner's income fluctuated in the months thereafter. See the first page of the agency's "Earned and Unearned Income" tab.
4. In October, 2014, the agency received a state wage match that showed petitioner's quarterly income to be higher than expected.
5. The agency obtained petitioner's actual income from her employer. Had the increase been reported petitioner would have had to pay some premiums for her son's BC+.
6. By a notice dated February 25, 2015, the agency informed petitioner that she was overpaid \$117.53 in BC+ from June 1 to October 31, 2014, based upon premiums she would have owed, claim no. Redact. The agency used actual earned income each month to determine the premium that would have been owed.

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, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The Handbook, App. 28.4.2 provides that if an overpayment is caused by a failure to report increased income, and the household would have remained eligible for BC+ but with increased premiums, the overpayment is the difference between the premiums originally paid and the correct premiums based on the actual income. In this case no premiums were paid originally, so the overpayment is the full amount of the premiums that should have been paid.

Under the rules in 2014, if household income was above 200% of the federal poverty level (FPL), the household would have a premium for a child's BC+ coverage. Handbook, App. 48.1.1. 200% of the FPL for a two-person household in 2014 was \$2,621.67. Handbook, Appendix 50.1, effective 2/1/14. Had petitioner reported the increase in income in April, 2014, there would have been no change in her son's BC+ coverage. The \$2,585 April income was still below 200% of the FPL. The reported change thus would have triggered another letter telling petitioner to report an increase in income again, probably if income increased to an amount higher than \$2,585.

In May, 2014, there was another increase in income resulting from petitioner receiving three paychecks. Had she reported the increase by June 10, as required, the agency presumably would have obtained petitioner's May pay stubs, and multiplied bi-weekly income by two. Using the May stubs, biweekly income was \$1,254.67 ($\$3,764 \text{ total May income} \div 3 = \$1,254.67$), and that amount multiplied by two is \$2,509.34. Again, the income would be below the premium threshold.

Petitioner's June income of \$2,485 again was below the premium threshold. It rose to \$2,780 in July in a two-paycheck month, and thus petitioner would have had to report the increase again, by August 10. Based upon that report, petitioner would have had a \$10 premium for September, and also for October. The agency's overpayment calculations are skewed because October again was a three-paycheck month. Instead of the \$97.53 premium in October, petitioner would have owed a \$10 premium had she reported her increased income timely.

I refer to the example for calculating an overpayment found in the Handbook, App. 28.4.2: "Tom and his family became eligible for BC+ in June 2008, without a premium. In his application Tom failed to disclose income from a second job which *would have resulted* in \$100 per month group premium." Italics added. The overpayment is the premium that would have resulted had the income been reported correctly; it is not a reconciliation based upon actual income.

I conclude that petitioner was overpaid MA, but the amount is actually only \$20 for the months of September and October, 2014.

CONCLUSIONS OF LAW

Petitioner was overpaid MA because she failed to report increases in income, but the agency incorrectly determined the overpayment amount.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to amend BC+ overpayment claim no. Redact from \$117.93 to \$20, with the overpayment being \$10 in September, 2014 and \$10 in October, 2014. The agency shall take the action within 10 days 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 Madison,
Wisconsin, this 4th day of May, 2015

\sBrian C. Schneider
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 4, 2015.

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