



FH



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION



PRELIMINARY RECITALS

Pursuant to a petition filed April 24, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services (MES) in regard to Medical Assistance, a telephonic hearing was held on May 13, 2015, at Milwaukee, Wisconsin. At the request of the parties, the record was held open until May 27, 2015 for the submission of consecutive closing arguments (MES by May 20, 2015 and petitioner’s responsive argument by May 27, 2015). MES timely submitted its closing argument to DHA (and to petitioner), which is received into the hearing record. However, petitioner failed to submit any closing argument to DHA by May 27, 2015 or even by the date of this decision.

The issue for determination is whether Milwaukee Enrollment Services (MES) is correctly seeking recovery of a \$808.12 BadgerCare (BC) Plus overpayment to the petitioner during the period of July 1, 2013 to December 31, 2013, due to his failure to timely report an increase in household income resulting in unpaid BC premiums for petitioner’s two children.

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: 
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides with his two children, [REDACTED].
2. The petitioner received BadgerCare (BC) Plus benefits for his two children during the period of period of July 1, 2013 through December 31, 2013.
3. The county agency sent an April 25, 2013 notice to the petitioner stating that if petitioner's household income increased above \$3,010.88, the petitioner was required to report that income change to the county agency by the 10th of the following month (May, 2013). See Exhibit 3.
4. The petitioner's earned income during May, 2013 of \$3,436.92 was above the income reporting requirement of \$3,010.88, which required petitioner to report the increase in his household income by the tenth of June, 2013 (which affected petitioner's July, 2013 BC premiums for his two children). See Exhibit 1.
5. The Department sent two SWICA match "alerts" to the county agency regarding discrepancies in the petitioner's reported earned income on November 21, 2013 and October 24, 2014.
6. Based upon those SWICA matches, the county agency sent a January 21, 2015 Request for Income Verification to the petitioner and to his employer, [REDACTED]. Employer verification from [REDACTED] was received by MES on about February 4, 2015 regarding petitioner's employment and income.
7. Based upon the employer income verification, the agency confirmed that an increase in petitioner's household income occurred during May, 2013 which was above the income limit of \$3,010.88 which had been stated in the MES' April 25, 2013 letter to the petitioner. The petitioner failed to timely report that increase in household income by June 10, 2013, which created a required monthly BC premiums for his two children.
8. The petitioner's household's income was above \$3,010.88 during the entire BC overpayment period of July, 2013 through December, 2013.
9. The petitioner's household's earned income was higher than he reported resulting in unpaid premiums during the months of July, 2013 through December, 2013.
10. The Department sent a March 19, 2015 BadgerCare Plus Overpayment Notice to the petitioner stating that his household received an overpayment of BadgerCare benefits in the amount of \$808.12 during the period of July 1, 2013 to December 31, 2013, due to his failure to timely report the increase in household income resulting in unpaid premiums for his two children. Exhibit 2.
11. The \$808.12 unpaid monthly premium for petitioner's children was calculated as follows: a) July, 2013 - \$88; b) August, 2013 - \$195.06; c) September, 2013 - \$136; d) October, 2013 - \$164; e) November, 2013 - \$195.06; and f) December, 2013 - \$30, as required premium per BadgerCare Plus Handbook, 48.1.1, "Premiums for Children" (Chart of BC children premiums amounts increasing from 200% FPL to above 300% FPL).
12. MES sent Repayment Agreements to the petitioner.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (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.wi.gov/bcplus/> :

28.1 OVERPAYMENTS.

An "overpayment" occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. **Concealing or not reporting income.**
2. **Failure to report a change in income.**
3. Providing misinformation at the time of application regarding any information that would affect eligibility.

(Emphasis added).

28.2 RECOVERABLE OVERPAYMENTS.

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

1. Applicant /Member Error

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

...

2. Fraud. ...

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

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In the instant case, during the hearing and while the record was held open, the county agency presented a well-organized and documented case to establish that it was correctly pursuing a BC overpayment against the petitioner. The county agency discovered through SWICA wage matches that petitioner failed to timely report the May, 2013 increase in household income by June 10, 2013. The county agency representative is correct that the April 25, 2013 notice to the petitioner did state that if petitioner's household income increased above \$3,010.88, the petitioner was required to report that income change to MES by the 10th of the next month. Thus, the petitioner owed unpaid premiums for his children during the entire overpayment period of July, 2013 through December, 2013. See above Findings of Fact. As a result, the county agency correctly determined that the petitioner was overpaid \$808.12 in unpaid BC premiums due to not timely reporting household income above \$3,010.88 as of June 10, 2013.

During the May 13, 2015 hearing, petitioner was unable to refute the MES's case, or undermine any of its substantial documentation that it was correctly seeking an MA overpayment against the petitioner during the period of July, 2013 through December, 2013. Instead, petitioner alleged in vague terms that he had verbally "cancelled" his BC coverage for his children sometime during May, 2013. However, petitioner was unable to provide any corroboration or documentation of such alleged cancellation. In addition, petitioner was unable to specify the date, time, or the person that he allegedly spoke to at MES to cancel his BC coverage. Petitioner's allegation was not supported by any reliable evidence.

On the other hand, the MES representative denied that the petitioner had cancelled his coverage and argued persuasively that his two children continued to receive BC payments and coverage during the overpayment period. In addition, MES submitted a convincing closing argument to support that it was correctly seeking to recover the BC overpayment. The petitioner failed to submit any responsive closing argument to DHA to refute MES's closing statement. See Preliminary Recitals above.

During the hearing, petitioner did not dispute the county agency's calculation of his household income during the overpayment period. Petitioner did not dispute that MES had sent an April 25, 2013 notice to petitioner, and that such notice notified him to report income above \$3,010.88. In any case, petitioner was also unable to establish any error in MES's calculation of his BC overpayment, or that he had made any payments towards that BC overpayment resulting from unpaid BC premiums for his children.

The BadgerCare Plus Handbook provides that BC members must report their income changes when their total monthly gross income exceeds the percentages of the Federal Poverty Limit (FPL for their group size) by the 10th of the month following the month in which total income exceeds the previous threshold. BadgerCare Plus Handbook, section 27.3, "Income Change Report."

Based upon the answers during the hearing, MES's written closing argument and the detailed itemization of his overpayment provided by MES (including detailed calculation of unpaid BC premiums), the petitioner was provided a full explanation of his BadgerCare overpayment. The petitioner was unable to establish with any specificity any error on the part of the county agency in concluding that his household income was above the income limit to require BC premiums for his children during the overpayment

period or that he had unpaid BC premiums. Accordingly, based upon the above hearing record, I must conclude that Milwaukee Enrollment Services (MES) is correctly seeking recovery of a \$808.12 BadgerCare (BC) Plus overpayment to the petitioner during the period of July 1, 2013 to December 31, 2013, due to his failure to timely report an increase in household income resulting in unpaid BC premiums for his two children.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services (MES) is correctly seeking recovery of a \$808.12 BadgerCare (BC) Plus overpayment to the petitioner during the period of July 1, 2013 to December 31, 2013, due to his failure to timely report an increase in household income resulting in unpaid BC premiums for petitioner's two children.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 28th day of July, 2015

\sGary M. Wolkstein
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 28, 2015.

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