



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/165886

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on June 09, 2015, at Waupaca, Wisconsin.

The issue for determination is whether the Department correctly assessed a medical overpayment in the amount of \$2,396.00 for the period from April 1, 2014 to March 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Luisa Mcky

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Waupaca County. She is the only person in her household.
2. On November 18, 2013 the petitioner applied for BadgerCare Plus (BCP). She reported that her monthly gross income was \$942.38 from self-employment.

3. On February 27, 2014 the agency sent the petitioner a notice stating that effective April 1, 2014 she would be enrolled in BCP. The notice explained that she had applied on November 18, 2013, and that her application had been approved effective April 1, 2014.
4. The agency received a State Wage match indicating that the petitioner's income was higher than what she reported on her application for BCP. The petitioner's income fluctuated between \$1,333 and \$2,491.90 for the months of April 1, 2014 through March 31, 2015.
5. The petitioner was ineligible, but received BCP coverage from April 1, 2014 through March 31, 2015. The total cost of these benefits during this time period was \$2,396.00

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.

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program's nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. Wis. Stat. § 49.45(23); 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 2.1, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in June 2015). The petitioner met the nonfinancial eligibility tests for the program.

The petitioner must also pass an income test. An eligible applicant cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount is \$972.50 monthly for a household of one, and \$1,310.83 for a household of two persons. *Id.*, § 50.1.

In this case the petitioner does not dispute that her monthly gross income fluctuated between \$1,333 and \$2,491.90 between April 1, 2014 and March 31, 2015. Rather the petitioner argues that she applied for BCP coverage in November 2013. She did not hear anything from the agency, and did believe that she was eligible. Then at the end of February 2014 the agency sends her a notice stating that she was eligible effective April 1, 2014. She did not remember receiving that notice. She admitted that the agency sent her notices around this time, but she did not read these notices because she did not believe that she was

eligible. The petitioner further argues that she obtained insurance through the marketplace when she did not believe she was eligible for BCP coverage.

April 1, 2014 was the very first day that the petitioner could be eligible for BCP. The petitioner is a childless adult. Prior to April 1, 2014 all childless adults were ineligible for BCP regardless of their income. This change in the law is the best explanation for the lag time between the petitioner's application and the agency's notice.

The next issue is the income reported on the petitioner's November 2013 application. The petitioner reported a monthly gross income below 100% of the FPL. If this were the petitioner's actual income, there would not be an overpayment because the petitioner would have been eligible for BCP coverage. However, the petitioner's actual income was significantly higher than what she reported on her BCP application. I further note that if a person reports an income below 100% of the FPL to marketplace application, the marketplace will not provide health coverage. Rather, the marketplace directs the person to apply for State Medicaid coverage, which in this case would be BCP.

CONCLUSIONS OF LAW

The Department correctly assessed a medical overpayment in the amount of \$2,396.00 for the period from April 1, 2014 to March 31, 2015.

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 Milwaukee,
Wisconsin, this 22nd day of June, 2015

\sCorinne Balter
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 22, 2015.

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