



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

MOP/165901

PRELIMINARY RECITALS

Pursuant to a petition filed May 6, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on June 3, 2015, at Madison, Wisconsin.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid BCP benefits from August 2014 through May 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted, Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Dane County.
2. The petitioner received BCP coverage as a household of two persons (self and his minor child LC) from at least June 2014 through May 2015.

3. On May 6, 2015, *Medical Assistance.../BadgerCare Plus Overpayment Notices* were mailed to the petitioner by the Department. The *Notices* advised that he had been overpaid in BCP benefits for his child from August 1, 2014 through May 31, 2015, and for himself for December 2014 through January 2015 (claims # Redact, # Redact, # Redact). The claims total \$875.
4. LC lived with the petitioner until June 29, 2014. She then went to live with her mother in Georgia. LC remained in Georgia through the date of this hearing.
5. The petitioner was obligated to report LC's absence from his Wisconsin household within 10 days. He did not do so, and failed to report her absence during subsequent contacts with the Department in 2014 and 2015. As a result, the Department continued to make monthly payments for Wisconsin HMO coverage for the child, even though she was not residing in Wisconsin. Also, when the reduced household size was compared to the income limit for a household of one (\$972.50 monthly), the result was that the petitioner was not eligible for BCP for himself in December and January.
6. The overpayment was due to client error—intentionally failing to report a change in household circumstances that affected eligibility. Although the petitioner may have been initially surprised by his daughter's unwillingness to return to him during the summer of 2014, as matters dragged on it should have been apparent that a change report was needed.

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 the departure of his child from his household for the overpayment months. When the child was not living in Wisconsin, she was not eligible for Wisconsin benefits. Wis. Stat. §49.471(4)(a). The petitioner does not challenge the agency’s arithmetic or his failure to report, but does assert that the overpayment was not intentional. He asserts that he believed his daughter would have returned to him before now. This explanation might have been plausible if the unexpected absence had been reported after one or two months. However, it is not plausible given that the absence has gone on for nearly a year. Also, when the petitioner reported in October 2014 that he was no longer receiving child support for LC, but then did not report her absence, his credibility on this point became close to zero. (He would not be entitled to child support if the child was not living with him.)

CONCLUSIONS OF LAW

1. The petitioner failed to timely report his changed household composition in July 2014, resulting in the creation of a BCP overpayment.
2. The county agency correctly determined that the petitioner was overpaid \$875 in BCP fees during the August 2014 through May 2015, 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 4th day of June, 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 4, 2015.

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