FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MOP/166374

PRELIMINARY RECITALS

Pursuant to a petition filed May 28, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on August 06, 2015, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner was overissued BadgerCare+ because the father of one of her children was living in the home but his income was not reported.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Dean Landvatter
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:
David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Kenosha County.
2. Petitioner was notified that that she had been overissued BadgerCare+ benefits. The basis for this Medicaid/BadgerCare+ overissuance claim was that income was not reported as required; more specifically, the father ([redacted]) of one of Petitioner's children was reported in the home but his income not reported.

3. Petitioner's household consists of Petitioner, [redacted], their child in common and 2 other children of Petitioner's from another relationship.

4. The agency sent Petitioner 3 notices that she had been overissued BadgerCare+ benefits, all dated April 27, 2015, that indicated the following:

    a. That Petitioner had been overissued BadgerCare+ during the period of July 1, 2012 through September 1, 2013 in the amount of $3,436.524 – this overpayment consists of premiums that would have been due had [redacted]'s income been included and Medicaid services that were paid for as well as capitation payments to an HMO during periods where there would not have been BadgerCare+ eligibility had [redacted]'s income been reported.

    b. That Petitioner had been overissued BadgerCare+ during the period of October 1, 2012 through September 30, 2013 in the amount of $1,011.00 – this consists of premiums that would have been paid for Petitioner's children had [redacted] income been reported.

    c. That Petitioner had been overissued BadgerCare+ during the period of October 1, 2012 through September 30, 2013 in the amount of $337.00 – this overpayment consists of premiums that would have been due for the child in common with [redacted] had [redacted]'s income been included.

5. The agency based its decision that [redacted] was in the home on the following:

    - A February 21, 2011 online renewal,
    - A second February 21, 2011 online renewal,
    - A six-month report form signed on September 19, 2011 is not clear but worker confirmed both in house from child care,
    - A February 16, 2012 online renewal,
    - An August 30, 2012 online renewal,
    - A six-month report form signed September 24, 2012,
    - A six-month report form signed February 24, 2013 and
    - An online renewal application dated August 22, 2013.

6. [redacted]'s income was not an issue at the hearing nor was the calculation of the amount of the overpayment.

7. The record was held open to give Petitioner an opportunity to submit evidence concerning where [redacted] was residing during the time alleged here. She submitted:

    - A lease for the above address for the period of 5/11 through 4/12, dated April 4, 2011, for the above address which indicates that Petitioner is the lessee and does not contain the name of [redacted];
    - A 2014 Federal tax form # 1098 indicating that [redacted] had paid mortgage interest on a property in Lindenhurst, Illinois;
    - A 2012 property tax bill for the Lindenhurst, Illinois property, which indicates that [redacted] and [redacted] are the taxpayers of record;
    - A 2013 property tax bill for the Lindenhurst, Illinois property which indicates that [redacted] and [redacted] are the taxpayers of record;

- A 2015 real estate tax bill which indicates that [redacted] is the sole taxpayer of record for the Lindenhurst property;

- An August 1, 2015 utility bill for the Lindenhurst property showing that the account is in the name of [redacted];

- A mortgage statement from February of 2015 indicating that [redacted] is the payer of a mortgage for the Lindenhurst property;

- An August 2015 utility bill for the above address showing that it is in the name of Petitioner and

- A July 2015 utility bill for the above address showing that it is in the name of Petitioner.

DISCUSSION

The BadgerCare+ eligibility calculation begins with a determination of who is included in the BadgerCare+ test group. During the overpayment period involved here the test group is the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. *BadgerCare+ Eligibility Handbook, §2.2.*

Inclusion in the test group is determined by qualifying relationships and legal responsibility:

> The BC+ Test Group includes the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. Inclusion in the Test Group is determined by qualifying relationships and legal responsibility.
>
> Anyone in the home who meets the criteria of being in the BC+ Test Group, is always included in the group whether or not s/he requested BC+.
>
> *BadgerCare+ Eligibility Handbook, §2.2.*

The BadgerCare+ Test Group for a primary person who is residing with his or her own child must include a child under age 19 of the primary person and the co-parent of a primary person's child. *Id. §2.2.1.*

Further, gross income is counted when determining BC+ eligibility. *BEH, §16.1.* The gross income limit for an adult for BadgerCare+ was 200% of the Federal Poverty Level (FPL). *BEH, §16.1, release 07-02. Additionally, children in a group with income in excess of 200% of the FPL were required to pay a premium. BEH, §19.1, Release 12-02. During the time periods involved here* 200% of the FPL *was* $4501.66 and increased to $4595 as of February 1, 2013 for a group of 5. *Operations Memos, respectively, 12-05, issued 1/31/12 and effective 2/1/12 and 13-02, issued 2/4/13 and effective 2/1/13.* Finally, as of July 1, 2012 parents were required to pay a premium if income exceeded 133% of the FPL. BEH, §12-02, effective 7/1/12. 133% of the FPL was $2993.60 which increased to $3055.66 as of February 1, 2013. *See Operations Memos, respectively, 12-05, issued 1/31/12 and effective 2/1/12 and 13-02, issued 2/4/13 and effective 2/1/13.*

That income for [redacted] was not reported is not contested here; rather, Petitioner maintains that he was not living with her during the period involved here. The agency bases the contention that Petitioner and [redacted]

were residing together on the 8 filings by Petitioner in which she reports [redacted] in the home. It does establish a prima facie case for the proposition that Petitioner and [redacted] were residing together.

Petitioner testified that [redacted] lives in Lindenhurst, Illinois but that he occasionally stays with her especially on weekends. In support of that testimony she submitted the documents noted at Finding # 6 post hearing.

I am sustaining the overpayment. Petitioner did report [redacted] in the home on multiple occasions. Questions on the renewal forms ask if he is a Wisconsin resident. She answered yes. There is also a question – does he intend to reside in Wisconsin. She answered yes.

Her own documents are inconclusive. That he is not on lease does not mean that he was not there. The real estate records from Lindenhurst suggest that [redacted] owned the property there with another male with the same last name during the period involved here. Thus that individual might well have been living at the Lindenhurst property. Utility bills are from 2015 rather than the time period of the overpayment.

The preponderance of the evidence, here the documentary record, does show that Petitioner and [redacted] were residing together as alleged. I am concluding that Petitioner, [redacted], their child in common and her 2 other children live in the same household, that all are included in the same group for purposes of determining BadgerCare+ eligibility and that the income of Petitioner's co-parent must be counted.

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).*

There is an overpayment here. Petitioner reported [redacted] in the home repeatedly but did not report his income. Finally, I note that liable parties for BadgerCare+ overpayments include adult group member and parents but not children. *BEH, §28.4.4.*

CONCLUSIONS OF LAW

That Petitioner failed to report the income of the father of one of her children thereby creating an overpayment BadgerCare+ Medicaid benefits as alleged.

THEREFORE, it is **ORDERED**

That 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 21st day of September, 2015

\sDavid D. Fleming
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 September 21, 2015.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability