



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/167479

PRELIMINARY RECITALS

Pursuant to a petition filed July 21, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on August 18, 2015, at West Bend, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely and, if so, whether he was overpaid BadgerCare+ benefits

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: Anthony Gehring
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Washington County.
2. Petitioner was sent 6 manually generated BadgerCare+ overpayment notices, all dated June 4, 2015; collectively they informed Petitioner that he had been overissued BadgerCare+ benefits in the amount

of \$3718.13 for varying months over the period from February 2013 through March 2015 for failing to report income. This is detailed in agency 82 page omnibus Exhibit # 3 so is not reproduced here.

3. The notices noted at Finding # 2 did not contain appeal instructions.
4. Petitioner was sent notices informing him of the income reporting threshold. See Exhibit #s 6, 7 and 8.
5. The overpayment consists of the capitation payment made by the State to the provider (capitation = premiums paid by the State to an HMO) as well as payments for Medicaid services paid by the State.

DISCUSSION

It appears that this appeal might be untimely but I cannot make such a finding as the agency did not provide the notices with the appeal instructions.

Eligibility and premium requirements depend upon total household income. *See Wis. Stat. § 49.471(1)(f)*. There are two different sets of income rules during the time periods involved here. Through April 2014, adults generally could not receive benefits if their household's income exceeded 200% of the federal poverty level. This limit generally did not apply to children. *Wis. Stat. § 49.471(4)(a)*. However, adults in households with income that exceeded 133% of the FPL had to pay a premium. Premiums were not assessed for children until household income exceeded 200% of the Federal Poverty Level. *Wis. Stat. § 49.471(10)(b); BadgerCare Plus Eligibility Handbook (BEH), 19.1 - release 13-01*.

After April 2014, the income limit for adults became 100% of the Federal poverty level and 300% for children. Children in households with 201% of the applicable Federal Poverty level are required to pay a premium. *See BEH, §16.1 and §19.1*.

As of February 1, 2103 200% of the FPL for 3 was 3255.00 and 133% was \$2164.58. As of February 1, 2014 133% of the FPL for 3 was \$2193.40. See omnibus Ex # 3. As of February 1, 2015 100% of the FPL for 3 was \$1674.17, 201% was \$3365.08 and 300% was 5122.06. *BEH, §15.1*.

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)*.

Petitioner questions whether some disability income he received during the time here should be counted. There is, however, no exclusion for disability income. *See BEH, §16.2*.

I am sustaining the overissuances involved here. Income was not reported as required. I will say, however, that Exhibit # 3 contains a significant amount of information that can be hard to process by a petitioner until a hearing and Decision. Exhibit # 3 contains charts with all income that was counted as well as income limits. If Petitioner reviews that and has an error that he finds he should note the rehearing instructions below and the rehearing filing time limit.

CONCLUSIONS OF LAW

1. That Petitioner’s appeal is timely.
2. That the agency has presented evidence sufficient to demonstrate that Petitioner was overpaid BadgerCare+ 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 19th day of October, 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 October 19, 2015.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability