



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/167553

PRELIMINARY RECITALS

Pursuant to a petition filed July 25, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Portage County Department of Human Services in regard to Medical Assistance, a hearing was held on August 19, 2015, at Wisconsin Rapids, Wisconsin.

The issue for determination is whether the respondent correctly determined an overpayment of Medical Assistance benefits to the petitioner.

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: Amanda Brooks

Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Peter McCombs

Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Wood County. Petitioner is married to AS, and they received MA benefits during the periods of January 1, 2012 – March 31, 2012, October 1, 2012 – December 31, 2012, June 1, 2013 – June 30, 2012, and October 1, 2014 – October 31, 2014.

2. Petitioner was employed during the time periods identified in Finding of Fact no. 2, above.
3. Sometime prior to February 26, 2015, the respondent was notified of a State Wage Discrepancy, which identified a discrepancy between the income claimed by petitioner's household for public assistance, and the income paid by petitioner's employer(s).
4. Petitioner was paid a base salary plus commission.
5. Income verifications were sent by the respondent as part of its investigation into the wage reporting discrepancy, but no verifications were returned.
6. By notices dated July 2, 2015, the respondent advised the petitioner that it had established the following MA overpayment claims:
  - [REDACTED] January 1, 2012 – March 31, 2012 \$ 863.64
  - [REDACTED] January 1, 2012 – March 31, 2012 \$ 577.03
  - [REDACTED] October 1, 2012 – December 31, 2012 \$1,377.38
  - [REDACTED] October 1, 2012 – December 31, 2012 \$1,154.60
  - [REDACTED] June 1, 2013 – June 30, 2013 \$ 181.00
  - [REDACTED] October 1, 2014 – December 31, 2014 \$2,172.54
  - [REDACTED] October 1, 2014 – December 31, 2014 \$1,482.35
7. On July 25, 2015, the petitioner filed the instant appeal contesting the overpayment.

### DISCUSSION

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).

Medical assistance recipients, including BC+ recipients, must report relevant changes to the agency within 10 days. Wis. Admin. Code § DHS 104.02(6); *BadgerCare + Eligibility Handbook* § 27.3; Exhibit #6. The petitioner received BadgerCare Plus, the medical assistance program for those whose income is below the federal poverty level who are not elderly or disabled. Wis. Stat. § 49.471. Because eligibility depends upon countable income vis á vis the federal poverty level, recipients must report when their income exceeds the eligibility limit. *BadgerCare + Eligibility Handbook* § 27.3. The county agency alleges that during the time periods identified in Finding of Fact no. 6, above, the petitioner received more BadgerCare Plus benefits than she was entitled to because she failed to report accurate household income. The Department may recover medical assistance overpayments that occur because the recipient fails to

report any change in her household income situation that would have affected her eligibility for benefits. Wis. Stat. § 49.497(1).

In doing so, BadgerCare Plus overpayments are calculated for ineligible households by adding all medical expenses and capitation rate fees paid on behalf of the household and then subtracting any premiums the household has paid while incorrectly receiving benefits. *BadgerCare Plus Handbook*, § 28.4.2.

At hearing the petitioner was unable to provide any evidence to refute the respondent's calculations or liability determination. Petitioner asserted that his hands were tied due to the fact that his employer in 2012, is no longer in business. While those records may indeed be unobtainable, the petitioner has provided no other argument that could serve as a rebuttal of the monthly income averages utilized by the respondent. Without something specific to rely upon, I find it impossible to overturn the respondent's determination here. I would entertain a Rehearing Request if the petitioner is able to provide any income information that would call into question the respondent's determination of and application of his monthly average income.

### CONCLUSIONS OF LAW

The respondent has correctly established the following MA overpayments to petitioner:

- [REDACTED] January 1, 2012 – March 31, 2012 \$ 863.64
- [REDACTED] January 1, 2012 – March 31, 2012 \$ 577.03
- [REDACTED] October 1, 2012 – December 31, 2012 \$1,377.38
- [REDACTED] October 1, 2012 – December 31, 2012 \$1,154.60
- [REDACTED] June 1, 2013 – June 30, 2013 \$ 181.00
- [REDACTED] October 1, 2014 – December 31, 2014 \$2,172.54
- [REDACTED] October 1, 2014 – December 31, 2014 \$1,482.35

**THEREFORE, it is**

**ORDERED**

That petitioner's appeal 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 22nd day of September, 2015

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\sPeter McCombs  
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 22, 2015.

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