



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MOP/167748

PRELIMINARY RECITALS

Pursuant to a petition filed August 5, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 2, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid BCP benefits from August 2013 to January 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name and address]

Respondent:

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

By: [Redacted] HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. BCP is a variant of Medical Assistance in Wisconsin for low-income persons who are not elderly or disabled. The petitioner was in an ongoing BCP case for three persons (self, wife, child) from at least June 2013 through January 2014. His wife continued on as the casehead for a group of

two persons (wife and child) from February 1 through June 30, 2014. When the petitioner's household applied for BCP in May 2013, it reported only the petitioner/husband's earnings. Thereafter, the wife got a job with [REDACTED]; she reported that job and its projected income of \$700 monthly on June 13. The Department sent the household an eligibility notice on June 27, advising that it would have to report if the household's income exceeded \$3,255. *See*, Exhibit 1, pp. 58-62. The \$3,255 is 200% of the federal poverty level (FPL) for a household of three; adults with household income over 200% FPL were not eligible for BCP in 2013, and children in such a household must pay a monthly premium.

3. The wife's job at [REDACTED] yielded more than \$700 monthly, and household income exceeded 200% FPL from July 2013 through January 2014. Employment at [REDACTED] ended, with the wife's last paycheck being issued in August 2013. The wife then obtained employment with [REDACTED] and [REDACTED] earnings were received from September 2013 forward.
4. The household's income continued to exceed 200% FPL through January 2014. The household did not report that it was receiving income exceeding 200% FPL until December 18, 2013 (which is too late for the Department's computers to change the January benefit).
5. On December 18, the wife reported that the husband left the household, and the agency removed him and his income from the group effective February 1, 2014. On January 7, 2014, the Department mailed her a notice advising that the child remained eligible and that the new income limit for the child only (300% FPL) in a group of two was \$3,877.50. *See*, Exhibit 1, pp. 67-71. No adults were covered by BCP from February 1, 2014 onward; however, the child's coverage continued. Child premiums were not paid. The wife, not the petitioner, is liable for the resulting February through June 2014 overpayment.
6. The petitioner moved out of his wife's residence in early December 2013. The couple is now divorced.
7. The petitioner was not eligible for adult BCP from August 2013 through January 2014. Child BCP premiums went unpaid from March through June, 2014. On June 29, 2015, the Department issued two *Medicaid/BadgerCare/BadgerCare Plus Overpayment Notices* to the petitioner, stating that he had been overpaid a total of \$16,875.89 for the August 1, 2013 through January 31, 2014, period. Claim #2900437862 was for adult BCP overpayments for this period, totaling \$16,290.71. In addition, claim #3900437863 was for the child-related overpayments for the period (an owed \$97.53 premium x 6 months). *See*, Exhibit 1, p. 116, Overpayment Attachment. The BCP program paid monthly HMO capitation fees and other charges on the household's behalf during these months (*e.g.*, a \$115.06 monthly HMO fee for each adult).

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>. Note that the statute allows recovery against any medical assistance recipient for whom payment was made (here, the husband), even if he was not the casehead who handled the BCP paperwork.

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. If a premium was owed, the unpaid premium amount is also an overpayment.

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 household failed to report (1) the increase in the wife's income to above the 200% of the federal poverty level (FPL) for the overpayment months, and (2) the commencement of her [REDACTED] employment for nearly four months. When the household income exceeded 200% FPL, they were not eligible for adult benefits. Wis. Stat. §49.471(4)(a). Based on the documented excess income, the agency came up with the overpayment amount. The petitioner does not challenge the agency's arithmetic, but does assert that the overpayment was not intentional. His wife correctly asserts that she reported the commencement of her job with [REDACTED] in June. She does not explain why she did not report in July that the [REDACTED] income was *much* higher than expected. She also gave no credible explanation for her failure to report her job/income from [REDACTED] until late December 2013. This reporting failure ([REDACTED]) is in sharp contrast to her multiple contacts to the agency in June, when she wanted to be sure that BCP was opening, and in August, when she wanted to be sure that BCP would stay open and that the agency was aware of the ending of her job at [REDACTED]. At hearing, the wife came off as intelligent, articulate, and loquacious, and it is not believable that she did not understand this notice or the income reporting requirements. Her assertion that she did not use her BCP coverage for large chunks of time in 2013 was also not credible. *E.g.*, in November 2013 she incurred \$8,782.22 in charges billed to BCP.

The one adjustment that must be made to the husband's overpayment liability concerns January 2014. Both ex-spouses testified that the husband was out of the household and living elsewhere by December 12, 2013. Therefore, he has no liability for January because he was no longer a household member. His ex-wife's delay in reporting him out does not create liability for him for January. His overpayment liability should be reduced by \$2,798.00 (wife's \$2,576.51 charges, his \$123.96 charge, child's \$97.53 premium).

CONCLUSIONS OF LAW

1. The petitioner's household failed to timely report increased income in June, 2013, resulting in the creation of a BCP overpayment.
2. The agency correctly determined that the petitioner was overpaid BCP benefits during the August 2013 through December 2013, period.
3. The petitioner is not liable for the \$2,798.00 in BCP overpayments for January 2014.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to reduce the petitioner's overpayment liability for the August 2013 through January 2014 period from \$16,875.89 to \$14,077.89 (*i.e.*, remove the January 2014 liability). The action shall be taken within 10 days of the date of this Decision. In all other respects, 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 2nd day of November, 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 November 2, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability