



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/168049

PRELIMINARY RECITALS

Pursuant to a petition filed August 13, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on September 15, 2015, at Sheboygan, Wisconsin.

The issue for determination is whether Waupaca County Department of Social Services (the agency) correctly seeks to recover from the Petitioner, an overpayment of BadgerCare+ benefits for the period of July 1, 2012 to September 30, 2012.

NOTE: The record was held open until the end of the day to give the agency an opportunity to provide copies of the applications and SMRFs submitted by the Petitioner, in addition to the case comments and the automated overpayment notices. The agency did not provide copies of the Petitioner's applications and SMRFs. The documents provided by the agency are as follows:

- Exhibit 12 – FoodShare Overpayment Notice dated August 10, 2015
Exhibit 13 – Medical Assistance Overpayment Notice dated August 10, 2015
Exhibit 14 – Case Comments
Exhibit 15 – CARES Employment Screen print out for [redacted]
Exhibit 16 – Paystub dated 3/28/12 and 4/11/12 from [redacted]
Exhibit 17 – CARES Employment Screen for [redacted]
Exhibit 18 – Pay Stubs for [redacted] dated 4/13/12, 3/30/12, 3/16/12
Exhibit 19 – CARES Child support screen print outs (3 pgs.)

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: Thiago Souza, Economic Support Specialist  
Waupaca County Department of Social Services  
811 Harding Street  
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:  
Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. On April 12, 2012, the Petitioner contacted the agency to report an increase in her hourly wage at Jansport. (Exhibit 12)
3. On April 23, 2012, the Petitioner submitted her paystubs from [REDACTED] and from [REDACTED] (Exhibits 16 and 18)
4. From [REDACTED], the Petitioner submitted three paystubs:
  - 3/16/12 – showed gross income totaling \$1,628.93, from bonus pay, regular pay and sick pay
  - 3/30/12- showed gross income of \$559.13, from regular pay and sick pay
  - 4/13/12 – showed gross income of \$816.38 from holiday pay, regular pay, vacation pay, overtime and overtime premium pay.(Exhibit 18)
5. The agency used the pay information from the March 30, 2012 and April 13, 2012 paystubs to determine Petitioner’s income. It did not consider Petitioner’s bonus pay from the March 16<sup>th</sup> pay stub, nor did the agency request further verification of the frequency with which Petitioner received such income. (Exhibits 14 and 17)
6. From [REDACTED], the Petitioner submitted two paystubs:
  - 3/28/12 – showing gross income of \$106.25
  - 4/11/12 – showing gross income of \$101.67(Exhibit 16)
7. On August 4, 2015, the agency sent the Petitioner a manual Wisconsin Medicaid and BadgerCare Plus Overpayment Notice, indicating that she was overpaid \$151.00 in benefits for the period of July 1, 2012 through September 30, 2012. No worksheet was attached. (Exhibit 9)
8. On August 10, 2015, the agency sent the Petitioner a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment notice, claim [REDACTED], alleging that she was overpaid benefits in the amount of \$151.00 for the period of July 1, 2012 through September 30, 2012. No worksheet was attached. (Exhibit 13)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 13, 2015. (Exhibit 1)

## DISCUSSION

In the case at hand, the agency asserts that the Petitioner caused an overpayment for the months of July 2012 through September 2012, because she failed to report her income as required. Specifically, the agency asserts that the Petitioner underreported her income from [REDACTED].

However, in April 2012, the Petitioner reported an increase in income and provided three paystubs from [REDACTED] to the agency. The March 16, 2012 pay stub clearly showed a substantial amount of bonus income, in the amount of \$956.93. However, the agency completely ignored that paystub and calculated the Petitioner's income, based on the other two stubs, which did not reflect the bonus pay.

The agency should have questioned the Petitioner's income and issued a request for verification of the frequency with which she received bonus pay. Indeed, it is mandatory to verify income. *See BadgerCare+ Eligibility Handbook (BEH) §9.9* The agency failed to question/act on the information regarding Petitioner's bonus pay. Consequently, any resulting overpayment was the result of agency error.

Under *BEH §28.2* overpayments of BadgerCare+ benefits are recoverable only when they result from Applicant/Member error, fraud, or member loss of a hearing. Under *BEH §28.3* recovery of BadgerCare+ overpayments should not be initiated if they are the result of agency error. Consequently, if an overpayment occurred, it is not a recoverable one.

It should be noted that even if the alleged overpayment was of a recoverable type, that I could not uphold the overpayment, because the agency failed to include an overpayment worksheet.

The Seventh Circuit Court of Appeals held that the demands of Procedural Due Process require that recipients of public assistance be given adequate notice of adverse action. *Dilda v. Quern*, 612 F. 2d 1055 (7<sup>th</sup> Cir. 1980). This holding is reflected in Wisconsin policy:

“Each client has the right to adequate and timely notice of adverse action.” *Income Maintenance Manual (IMM) §§ 3.2.1 and 3.2.2*

“Notify the member or the member's representative of the period of ineligibility, the reason for his/her ineligibility, the amounts incorrectly paid, and request arrangement of repayment within a specified period of time.” *BadgerCare+ Eligibility Handbook (BEH) §28.5*

More specifically, the Court of Appeals in *Dilda v. Quern*, found that a State Agency had violated the due process of rights of public assistance recipients, because the notice advising them of the reduction or cancellation of their benefits failed to provide the recipient with a detailed notice showing the breakdown of income and allowable deductions. *Dilda v. Quern*, 612 F. 2d 1055 (7<sup>th</sup> Cir. 1980)

Thus, because the agency has not shown that it provided the Petitioner with overpayment worksheets, showing how they calculated her income and showing how it calculated the overpayment, the agency has not met its burden to prove that it correctly seeks to recover an overpayment from the Petitioner.

## CONCLUSIONS OF LAW

The agency incorrectly sought to recover from the Petitioner, an overpayment of BadgerCare+ benefits for the period of July 1, 2012 to September 30, 2012.

**THEREFORE, it is**

**ORDERED**

That the agency rescind overpayment claim # [REDACTED] which alleged an overpayment of \$151.00 for the period of July 1, 2012 through September 30, 2012. The agency shall take all administrative steps to complete this task within ten days of this decision.

**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 7th day of October, 2015.

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\sMayumi M. Ishii  
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 7, 2015.

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