



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/168120

PRELIMINARY RECITALS

Pursuant to a petition filed August 18, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on September 23, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly established a BadgerCare (BC) overpayment in the amount of \$1,663.82 for the period from November 1, 2014 through August 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Kathleen Jones

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Washington County. The petitioner was a Waukesha County resident during the overpayment period. The petitioner was the only person in her household.

2. The petitioner applied for BadgerCare (BC) Plus benefits on August 4, 2014. The petitioner reported that she did not have any income.
3. On September 5, 2014 the agency sent the petitioner a notice stating that she qualified and was approved for BC Plus benefits effective September 1, 2014. The notice further stated that if her monthly household income exceeded \$972.50, then she had until the 10th day of the following month to report the increase in income.
4. The petitioner obtained employment as a teacher. In September 2014 the petitioner's monthly gross income exceeded \$972.50.
5. Between September 4, 2014 and July 29, 2015 the petitioner never contacted the agency.
6. In July 2015 the agency received a state wage match report indicating that the petitioner was working and had an income.
7. On July 30, 2015 the petitioner called the agency to cancel her BC Plus coverage.
8. The agency requested verification of the petitioner's wages from her employer, and learned that the petitioner was paid \$1,488.71 semi-monthly.
9. On August 6, 2015 the agency sent the petitioner a notice stating that she was overpaid \$1,663.82 in BC Plus benefits for the period from November 1, 2014 through August 31, 2015.
10. On August 20, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(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.

See also the department's MA Handbook, Appendix 6.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

When the petitioner applied for BC Plus coverage in August 2014 she was not working, and was eligible for the program. The agency sent the petitioner a notice that specifically stated if her monthly gross income exceeded \$972.50, she had until the 10th day of the following month to report the increase. The petitioner found a job in September 2014. Her income in September 2014 far exceeded \$972.50. The petitioner had until October 10, 2014 to report the increase in income. Changes reported in October would have gone into

effect in November. Had the petitioner timely reported her employment income, her BC Plus benefits would have terminated effective November 1, 2014. Thus, the agency established an overpayment for the period of November 1, 2014 to August 31, 2015. The petitioner's BC Plus benefits terminated effective August 31, 2015.

The petitioner argues that she called to cancel her BC Plus coverage prior to the overpayment period. I do not find this testimony credible. There is no corroboration that the petitioner called to cancel the insurance. The petitioner provided documentation showing that she used the insurance that her employer provided in December 2014. This does not demonstrate that she called to cancel her BC Plus coverage. The case notes from the agency do not show that the petitioner called to cancel BC Plus coverage in December 2014. The case notes accurately reflect every other interaction the petitioner has had with the agency.

In addition, the petitioner was not able to provide any specificity with regard to when she called or who she talked to. She testified that she called an 800 number and then had to call the actual county agency. The agency worker stated that this would not have been the process in December 2014. This is only the process after an overpayment is established. The case notes reflect that the petitioner called to cancel BC Plus coverage on July 30, 2015. That would have been the process at that time as the agency had established an overpayment. That would not have been the process in December 2014. The petitioner's testimony with respect to stating that she called and canceled is self-serving and not credible.

The petitioner does not dispute that her income was above the program limits during the overpayment period. She further does not contest the agency's calculation of the overpayment. I have reviewed the overpayment and calculations myself, and everything is correct.

CONCLUSIONS OF LAW

The agency correctly established a BadgerCare (BC) overpayment in the amount of \$1,663.82 for the period from November 1, 2014 through August 31, 2015.

THEREFORE, it is

ORDERED

That 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 Waukesha County. 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 25th day of September, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 25, 2015.

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