



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/168583

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 10, 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 October 06, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of BadgerCare Plus (BC+) benefits from the Petitioner in the total amount of \$4,061.03 for the period of May 1, 2013 – February 28, 2014.

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: Katherine May

Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner's household size for purposes of BC+ benefits is four, including herself, her husband and their two children.

2. On February 7, 2013, the Petitioner completed a renewal for BC+ benefits. On February 8, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her two children were eligible for BC+ benefits effective March 1, 2013 with no monthly premium. It also informed her that she and her husband were eligible for BC+ benefits effective March 1, 2013 with a monthly premium of \$191. This was based on earned income for the Petitioner of \$1,160/month from [REDACTED] and earned income for the Petitioner’s husband of \$2,382.40 from [REDACTED] for total gross household income of \$3,542.40/month. The notice also informed the Petitioner of the requirement to report to the agency if total gross monthly household income exceeded \$3,630.63.

3. On November 26, 2013, the agency received an alert of a discrepancy between wages reported by the Petitioner and wages reported to the state by employers of the Petitioner and her husband.

4. On April 21, 2015, the agency received verification of the Petitioner’s actual wages from The Marcus Corporation:

March, 2013	\$1,315.56	April, 2013	\$1,049.10
May, 2013	\$3,380.42	June, 2013	\$1,244.78
July, 2013	\$ 593.56	August, 2013	\$1,547.19
Sept, 2013	\$1,356.77	October, 2013	\$2,328.03
Nov., 2013	\$3,970.34	Dec., 2013	\$1,740.34
January, 2014	\$1,654.55	February, 2014	\$1,685.82

5. The agency requested but never received verification of the Petitioner’s husband’s 2013 actual wages from [REDACTED]. The State Wage Record indicates that [REDACTED] reported the following quarterly wages issued to the Petitioner’s husband:

Quarter 1 2013	\$8,766.40 (\$2,922.13/month)
Quarter 2 2013	\$9,540.90 (\$3,180.30/month)
Quarter 3 2013	\$14,293.47 (\$4,764.49/month)
Quarter 4 2013	\$14,819.17 (\$4,939.72/month)

[REDACTED] submitted verification of the Petitioner’s 2014 actual wages as follows:

January, 2014	\$3,888.79
February, 2014	\$4,199.32

6. Total gross household income for the period of March, 2013 – February, 2014 was:

March, 2013	\$4,237.69	April, 2013	\$4,229.40
May, 2013	\$6,560.72	June, 2013	\$4,425.08
July, 2013	\$5,358.05	August, 2013	\$6,311.68
Sept., 2013	\$6,121.26	October, 2013	\$7,267.95
November, 2013	\$8,910.06	Dec., 2013	\$6,680.57
January, 2014	\$5,543.34	February, 2014	\$5,885.14

7. On August 14, 2015, the agency issued Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice2 to the Petitioner informing her that the agency intends to recover an overissuances of BC+ benefits in the amount of \$1,600.36 and \$2,460.67 for the period of May 1, 2013 – February 28, 2014 due to Petitioner’s failure to report household income exceeding program limits.

8. On September 10, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

MA/BC+ 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 BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The agency has the burden of demonstrating, by a preponderance of the evidence, that there was an overpayment of benefits.

In this case, the agency alleges that the Petitioner's gross household income exceeded the reporting requirements during the overpayment period and the Petitioner did not report to the agency when this occurred. As a result, the agency determined that the Petitioner and her husband would not have been eligible for BC+ benefits and the children would have been eligible with a monthly premium. The agency seeks to recover the capitation payments and claims paid by the agency on behalf of the Petitioner and her husband and seeks to have the Petitioner pay the premiums that should have been paid for the children.

The agency presented evidence of the Petitioner's gross household income during the overpayment period. It noted that the Notice of Decision dated February 8, 2013 informed the Petitioner of the requirement to report if gross monthly household wages exceeded \$3,630.63 which represents the program limit for a household size of four. The agency's evidence of wages from the Petitioner's employer and the Petitioner's husband's employer establishes that the gross monthly household income exceeded the program limit in each month of the overpayment period.

At the hearing, the Petitioner's husband testified that he and the Petitioner always provided income information when requested. He did not dispute the income reported to the agency by his employer and Petitioner's employer. He indicated that he did not understand that they were required to report between renewals. He further asked for an explanation of the overpayment amount which was provided by the agency representative.

In determining the amount of the overpayment, the agency calculated the capitation rate that was paid in each month for the Petitioner and her husband. To the capitation, the agency added claims that were paid by the agency for the Petitioner and her husband. Reports of the capitation rate and claims paid were provided. From that amount, the monthly premiums that the Petitioner paid for herself and her husband

was subtracted. The total amount due for the capitation rate and claims paid for Petitioner and her husband was \$2,460.67.

As for the claim involving the Petitioner's children, the agency determined the amount of the premium that would have been due if the Petitioner had timely reported household income to the agency. A report of the premium due was provided. The total amount of premiums that should have been paid for the children during the overpayment period was \$1,600.36.

Based on the evidence presented, I conclude that the agency properly seeks to recover a total overissuance of BC+ benefits from the Petitioner in the amount of \$4,061.03 for the period of May 1, 2013 – February 28, 2014.

The Petitioner's husband requested consideration of a payment plan if the overpayment was upheld. He was advised to contact the Public Assistance Collections Unit to request a repayment arrangement. That unit can be reached at 1-██████████.

**CONCLUSIONS OF LAW**

The agency properly seeks to recover a total overissuance of BC+ benefits from the Petitioner in the amount of \$4,061.03 for the period of May 1, 2013 – February 28, 2014.

**THEREFORE, it is ORDERED**

That the Petitioner's 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**

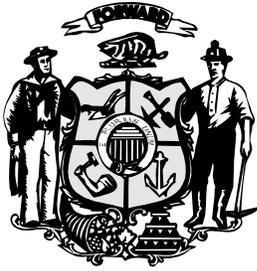
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 1st day of December, 2015

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\sDebra Bursinger  
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 December 1, 2015.

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