



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/168598

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 11, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on October 14, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the agency correctly assessed an overpayment in the amount of \$2,112.88 for the period of November 1, 2014 through April 30, 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: Jeannie Ortiz

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Winnebago County. The petitioner is a household of one.
2. On July 30, 2015 the agency sent the petitioner a notice of Medical overpayment notice stating that he was overpaid \$2,112.88 in medical benefits for the period of November 1, 2014 through April 30, 2015.

3. Previously, on April 2, 2014, the agency sent the petitioner a notice stating that he had to report when his monthly gross income exceeded \$972.50. He had until the 10<sup>th</sup> day of the month following the increase in income to report.
4. The petitioner began serving as an [REDACTED] member September 2, 2014. He participated in the program as a Community HealthCorps member. He received an annual sum of \$12,100 for his ten month contract. His payments continued through April 30, 2015.
5. On September 11, 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.

BadgerCare Plus (BCP) members must report when their income exceeds 100% of the Federal Poverty Limit (FPL). *BadgerCare Plus Handbook*, § 27.3. When a person is paid in a lump sum for a contracted amount of time, that lump sum payment is divided by the length of the contract. For example, if a person gets a lump sum payment of \$10,000 for a 10-month contract, the \$10,000 is divided by 10 giving the person a monthly gross income of \$1,000. *BadgerCare Plus Handbook*, § 16.4. Under MAGI (Modified Adjusted Gross Income) rules any cash benefits received through [REDACTED] is considered income, and therefore counted when determining BC Plus eligibility. *BadgerCare Plus Handbook*, § 16.4.1. Previously under the non-magi BC Plus rules [REDACTED] stipends were disregarded, and not counted as income when determining program eligibility.

The petitioner argues that he received a letter from [REDACTED], which stated that he was not paid a salary, and that the money they paid him was not considered income for federal assistance programs. He argues that based upon that letter from [REDACTED] he did not disclose the [REDACTED] payments to the agency. This highlights the importance of full disclosure to the agency. When a person fully discloses all money received to the agency, the agency is able to make the determination what money is counted as income and what money is disregarded. I agree that [REDACTED] misinformed the petitioner. However, the BC Plus program has no control over what [REDACTED] tells their members. In the past the [REDACTED] stipends were not considered income, and the petitioner would have been eligible for the BC Plus program. This changed under the MAGI rules. Had it been the agency that had misinformed the petitioner, he would not

be liable for the overpayment. However, because he failed to disclose the [REDACTED] payments to the agency, the agency was unable to count those payments.

There is no dispute that [REDACTED] paid the petitioner a \$12,100 stipend for 10 month contract, and that the petitioner's monthly gross income was \$1,210. 100% of the FPL for a household of one was \$972.50. The petitioner's [REDACTED] payments were over that amount. Thus the petitioner was not eligible for the BC Plus program. There is no dispute about the overpayment time period.

### **CONCLUSIONS OF LAW**

The agency correctly assessed an overpayment in the amount of \$2,112.88 for the period of November 1, 2014 through April 30, 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**

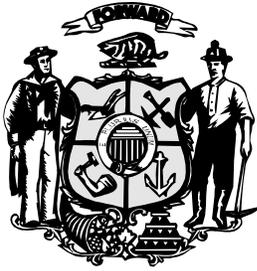
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 22nd day of October, 2015

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Corinne Balter  
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 22, 2015.

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