



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/168948

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Crawford County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on October 14, 2015, at Prairie Du Chien, Wisconsin.

The issue for determination is whether the county agency is correctly seeking recovery of a \$228 BadgerCare Plus overpayment to the petitioner during the period of April 1, 2015 to May 31, 2015, due to her failure to timely report her return to employment and her increased income resulting in unpaid BC premiums for herself.

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: [REDACTED] [REDACTED], ESS
Crawford County Department of Human Services
225 N Beaumont Rd., Suite 326
Prairie Du Chien, WI 53821

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Crawford County who resides in a household of four (petitioner, her two children, and her boyfriend, [REDACTED] (who is also the father of one of her children).

2. The petitioner received BadgerCare (BC) Plus benefits during at least the period of December, 2014 through May, 2015 for a BC group of three (petitioner and her two children).
3. The county agency informed petitioner in the December 24, 2014 notice, her “reporting requirement” requiring her to timely report changes in her household’s employment and income to the county agency. That notice stated specifically that if petitioner’s household’s income went above \$1,649.17 she was required to report that increased income to the agency by the 10th of the month following that change.
4. The petitioner return to employment and income went above the reporting requirement during February, 2015. Petitioner failed to report that employment and income to the agency by March 10, 2015.
5. The agency “discovered” that petitioner had returned to employment in petitioner’s May 6, 2015 online FS renewal application.
6. If petitioner had timely reported all of her increased earned income, then her she would have been required to pay the following BC Plus premiums for herself: \$145 for April, 2015; and \$83 for May, 2015 which would have resulted in a total BC premium of \$228 for the months of April and May, 2015.
7. The county agency sent a July 31, 2015 BadgerCare (BC) Plus Overpayment Notice to the petitioner stating that she received an overpayment of \$228 during the months of April and May, 2015, due to her failure to report her return to employment and her increased earned income due to client error. As a result, petitioner had unpaid BC premiums of \$145 for April, 2015 and \$83 for May, 2015 which resulted in petitioner’s total BC overpayment of \$228.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (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.wi.gov/bcplus/> :

28.1 OVERPAYMENTS.

An “overpayment” occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. **Concealing or not reporting income.**
2. **Failure to report a change in income.**
3. Providing misinformation at the time of application regarding any information that would affect eligibility.

(Emphasis added).

28.2 RECOVERABLE OVERPAYMENTS.

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

1. **Applicant /Member Error**

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member’s behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

...

2. **Fraud.** ...

BCPEH, §28.1 – 28.2.

The overpayment must be caused by the client’s error. Overpayments caused by agency error are not recoverable.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency’s case and establish facts sufficient to overcome the county agency’s evidence of correct action.

During the October 14, 2015 hearing, the county agency representative, ESS [REDACTED], presented a well-organized case, and established that the petitioner failed to timely report to the county agency her return to employment and resultant increased income. The increased income was discovered through a May 6, 2015 online re-application by petitioner. As a result, petitioner’s increased employment income was not budgeted as income to the BC household in determining the petitioner’s BC household eligibility and premiums for the months of April and May, 2015. The petitioner did not contest that she had received BC benefits during April and May, 2015. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county’s BC overpayment determination of \$228 for that overpayment period.

During the hearing, petitioner alleged with no corroboration that she informed some person at the agency that she had returned to employment. The county representative responded that there was no evidence at the agency that petitioner had reported her return to work and/or her increased earned income. The

petitioner was unable to provide any reliable evidence of such alleged notification to the agency or any evidence to refute that her household net income was above the BC premium limit to require petitioner's BC premiums to be paid for April and May, 2015.

The county agency discovered that petitioner had returned to employment in petitioner's May 6, 2015 online renewal application, but that petitioner failed to timely report the February, 2015 increase in household income by March 10, 2015. The county agency representative is correct that the December 24, 2014 notice to the petitioner did state that if petitioner's household income increased above \$1,649.17, the petitioner was required to report that income change to the agency by the 10th of the next month. Thus, the petitioner owed unpaid premiums for herself during the overpayment period of April and May, 2015. See above Findings of Fact. As a result, the county agency correctly determined that the petitioner was overpaid \$228 in unpaid BC premiums due to not timely reporting household income above \$1,649.17 as of March 10, 2015.

The BadgerCare Plus Handbook provides that BC members must report their income changes when their total monthly gross income exceeds the percentages of the Federal Poverty Limit (FPL for their group size) by the 10th of the month following the month in which total income exceeds the previous threshold. BadgerCare Plus Handbook, section 27.3, "Income Change Report."

The petitioner was unable to establish with any specificity any error on the part of the county agency in concluding that his household income was above the income limit to require BC premiums for the petitioner during the overpayment period or that she had unpaid BC premiums. According, based upon the above, I conclude that the county agency is correctly seeking recovery of a \$228 BadgerCare Plus overpayment to the petitioner during the period of April 1, 2015 to May 31, 2015, due to her failure to timely report her return to employment and her increased income resulting in unpaid BC premiums for herself.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a \$228 BadgerCare Plus overpayment to the petitioner during the period of April 1, 2015 to May 31, 2015, due to her failure to timely report her return to employment and her increased income resulting in unpaid BC premiums.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 9th day of December, 2015

\sGary M. Wolkstein
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 9, 2015.

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