



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MAC/168950

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 22, 2015, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on October 15, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly issued a Notice of Administrative Action and Order to Compel Payment to the Petitioner for an unpaid BC+ overpayment.

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: Kathy Jones

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

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On September 2, 2014, the Petitioner's wife JK filed an online change report with the agency. She reported the Petitioner in her household. No income was reported for the Petitioner.

3. On September 5, 2014, JK reported to the agency that the Petitioner was in the household and that his employment ended on August 15, 2014.
4. On September 8, 2014, the Petitioner started new employment.
5. On September 22, 2014, the agency issued a Notice of Decision to JK at the address on [REDACTED]. It notified the Petitioner's wife that five people in her household would receive BC+ benefits effective October 1, 2014 with no premium, including the Petitioner. The notice indicated that this determination was based on JK's income from [REDACTED] of \$1,407.24/month and rent of \$1,200/month. The notice also informed the Petitioner that she must report to the agency by the 10th day of the next month if her household income exceeds \$2,325.83.
6. In October, 2014, the household income exceeded the reporting requirement. The Petitioner and JK were required to report income to the agency by November 10, 2014. This would affect BC+ benefits beginning December, 2014.
7. On January 15, 2015, JK completed a renewal. She did not report the Petitioner's income or an increase in her earned income.
8. On February 19, 2015, the agency issued a Medicaid/BadgerCare Overpayment Notice to the Petitioner and JK at the [REDACTED] address. It notified the Petitioner and JK that the agency intends to recover an overissuance of BC+ benefits in the amount of \$646 for the period of December, 2014 – February, 2015 for failure to report income for the Petitioner. The overpayment represents the amount of premium that the Petitioner and JK owe for the period based on actual household income. The notice also informed the Petitioner of the right to file an appeal of the agency determination by requesting a hearing within 45 days of the date of the notice.
9. On April 2, 2015, May 4, 2015 and June 2, 2015, the agency issued dunning notices to the Petitioner at the [REDACTED] address.
10. On July 17, 2015, the agency issued a notice of state tax refund intercept to the Petitioner at the [REDACTED] address. It notified the Petitioner that the state may intercept tax refunds for an unpaid public assistance debt. It further notified the Petitioner of the right to appeal that action by requesting a hearing within 30 days of the date of the notice.
11. On September 18, 2015, the agency issued a Notice of Administrative Action, Order to Compel Payment to the Petitioner at the [REDACTED] address notifying him that the Order to Compel Payment is issued because of failure to repay the BC+ overpayment. It further notifies him that the only issue he may contest is that he has not repaid or has not entered into or complied with an acceptable repayment agreement.
12. On September 22, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

Following issuance of an MA/MAPP overpayment notice, a person who then fails to enter into or adhere to a repayment agreement may be subject to an order to compel payment of that liability:

Wis. Stat. 49.497(1m)(a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the

person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.

Wis. Stat. §49.497(1m)(a).

The Petitioner did not appear for the hearing. His wife JK did appear though she stated that she was of the understanding that he was going to appear for the hearing. She stated that when she renewed the BC+ case, the Petitioner was not in the household and that he was living in Milwaukee. He continued to use her address. She stated she did not report his income because he wasn't living there. She further testified about confusion regarding payments being made toward the repayment.

The Petitioner's appeal is untimely as to the BC+ overpayment and the tax intercept action. The appeal was timely as to the Order to Compel Payment. However, the only issue for appeal in such action is that the debt has been repaid or that the Petitioner has complied with a repayment agreement. There was no evidence presented that the Petitioner has repaid or that he entered into and complied with a repayment agreement. Therefore, I conclude the agency properly issued a Notice of Administrative Action, Order to Compel Payment to the Petitioner.

### **CONCLUSIONS OF LAW**

The agency properly issued a Notice of Administrative Action, Order to Compel Payment to the Petitioner.

**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 16th day of November, 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 November 16, 2015.

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