



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/168995

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 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 November 24, 2015, at Oshkosh, Wisconsin. The record was held open for 10 days for the submission of additional evidence by both parties. The agency submitted additional evidence on November 24, 2015. On December 2, 2015, the Petitioner submitted additional evidence. The record closed on December 4, 2015.

The issue for determination is whether the agency properly seeks to recover an overissuance of BC+ benefits in the amount of \$225.63 for the period of July, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jeanie Ortiz

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Winnebago County.

2. On January 7, 2014, the Petitioner contacted the agency and reported that her husband [REDACTED] moved out of the home on December 21, 2013. [REDACTED] was removed from the Petitioner's case. There is no indication that Petitioner reported at that time that [REDACTED]'s income continued to be deposited into her checking account.
3. On February 7, 2014, March 12, 2014, April 4, 2014, April 22, 2014, May 30, 2014, and June 24, 2014, the agency issued Notices of Decision to the Petitioner informing her that she would receive BC+ benefits for herself and her children with no monthly premium. The notice also informed the Petitioner that if her gross monthly household income exceeded \$1,649.17, she must report to the agency by the 10th day of the next month.
4. On May 2, 2014, the Petitioner completed a SMRF. She reported no changes in household income. She reported no change in her employment at [REDACTED] [REDACTED]. She reported new employment at [REDACTED].
5. Petitioner's husband [REDACTED] was incarcerated from July 18, 2014 – October 18, 2014. Petitioner used [REDACTED]'s income to pay household expenses and [REDACTED]'s Huber fees for this period.
6. On August 28, 2014, the Petitioner completed a SMRF. She reported no changes in household composition. She did not report that [REDACTED]'s earned income was deposited in her checking account.
7. In March, 2015, the agency received an anonymous tip that [REDACTED] was living with the Petitioner. The agency commenced an investigation.
8. Petitioner's household income for purposes of BC+ for July, 2014 was \$2,908.29. The BC+ program gross income limit for adults for July, 2014 was \$ \$1,674.17/month for a household of three.
9. On September 9, 2015, the agency issued a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice and worksheet (Claim # [REDACTED]) to the Petitioner informing her that the agency intends to recover an overissuance of BC+ benefits in the amount of \$1,015.84 for the period of November 1, 2014 – April 30, 2015 due to Petitioner's failure to report accurate household members. The agency issued a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice and worksheet (Claim # [REDACTED]) to the Petitioner informing her that the agency intends to recover an overissuance of BC+ benefits in the amount of \$30 for the period of April, 2015 due to Petitioner's failure to report accurate household members.
10. On September 10, 2015, the agency issued a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice and worksheet (Claim # [REDACTED]) to the Petitioner informing her that the agency intends to recover an overissuance of BC+ benefits in the amount of \$225.63 for the period of July, 2014 due to Petitioner's failure to report accurate household members.
11. On September 23, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.
12. On November 20, 2015, the agency issued a Corrected Claim notice to the Petitioner informing her that Claim # [REDACTED] and Claim # [REDACTED] have been reduced to \$0.

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 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 determining eligibility for BC+ in July, 2014, all available gross income was to be counted. BC+ Handbook, § 16.1.2. Available income was defined as income that is:

1. Actually available, and
2. The person has a legal interest in it, and
3. The person has the legal ability to make it available for support and maintenance.

Id.

Also, the BC+ Handbook states that under non-MAGI rules (applicable to the Petitioner's case for July, 2014), the agency must count money received from another person which is not repayment for goods or services if the amount is over \$30/calendar quarter. BC+ Handbook, § 16.5. Under MAGI rules (applicable to the Petitioner's case for November, 2014 – May, 2015), money from another person is counted as income in the month received only if it meets either of the following criteria:

- Income from a bequest, devise or inheritance
- Income generated from property given to a trust if the income is paid, credited or distributed to the individual

Id.

In this case, the agency originally established an overpayment based on an anonymous tip and investigation that Petitioner's husband ■■■ was residing in the household during 2014 and 2015. After discussions with the Petitioner, the agency conceded that ■■■ was not residing in the household from January, 2014 - May, 2015. However, the agency revised the overpayment based on information that, though ■■■ was not residing in the household, his earned income was being deposited into the Petitioner's checking account for the household's use. Therefore, the agency based its revised overpayment on the Petitioner's failure to accurately report household income.

Based on the evidence provided, I conclude that the agency properly determined that there was an overissuance of BC+ benefits to the Petitioner based on ■■■'s income not being budgeted in determining the Petitioner's eligibility and allotment for BC+ benefits. There is insufficient evidence presented by the Petitioner that she reported ■■■'s income as available to the household. The case notes contain no indication of such report. I am taking judicial notice of Notices of Decision issued by the agency to the Petitioner. The notices clearly informed the Petitioner that only her earned income was being considered by the agency. The notices also informed the Petitioner of the requirement to report if the household's income exceeded a certain level and there is no indication that Petitioner ever contacted the agency to

report that her household income exceeded that reporting requirement. Therefore, I find the overissuance of BC+ benefits was a client error in not reporting ■■■'s income being deposited into her account.

In accordance with the BC+ rules in effect for the Petitioner's case for July, 2014, the agency counted ■■■'s income because it was actually available, the Petitioner had a legal interest in it (as ■■■'s wife) and the Petitioner had the legal ability to make it available for support and maintenance. The gross household income for July, 2014 was counted as \$2,908.29 for purposes of BC+ from ■■■'s earned income and the Petitioner's earned income. This is clearly more than the limit of \$1,674.17. Therefore, the Petitioner was not eligible for BC+ benefits. The agency produced a report of the capitation rate and benefits paid for the Petitioner in July, 2014, showing a capitation rate of \$153.50 was paid and claims of \$72.13.

Based on the evidence provided, I conclude the agency properly seeks to recover an overissuance of BC+ benefits in the amount of \$225.63 for the period of July, 2014.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of BC+ benefits in the amount of \$225.63 for the period of July, 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 14th day of December, 2015

\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 14, 2015.

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