



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/169194

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 2, 2015, under Wis. Stat., §49.45(5), to review a decision by the Dane County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on November 12, 2015, by telephone.

The issue for determination is whether petitioner was overpaid MA because she failed to report income.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] |  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED]  
Dane County Dept. of Human Services  
1819 Aberg Avenue  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of North Carolina. She resided in Dane County and received MA there until August, 2014.
2. Petitioner received FoodShare and MA for herself and her daughter in Dane County in 2013. In the summer, 2013, petitioner received both child support and unemployment compensation, but by the end of September those incomes ended. In October, 2013 petitioner's only reported income was \$665.28 per month Supplemental Security Income (SSI).

3. By a notice dated October 29, 2013, the county informed petitioner that her daughter would receive BadgerCare Plus (BC+) MA with no premium (petitioner received MA separately as an SSI recipient). The notice informed petitioner that she needed to report a change if income rose above \$1,292.50. Petitioner began to work for [REDACTED] in either September or October; her October income from [REDACTED] was \$391.88, and she did not report it.
4. Petitioner began to receive BC+ effective December 1, 2013 along with her daughter, with no premium (I cannot determine what happened to petitioner's SSI, or even if she was receiving SSI at all in 2013; SSI was not mentioned during the hearing and I know of it only because of an October 28, 2013 notice included in the record). A notice dated November 26, 2013 told petitioner about that change; that notice told petitioner that she had to report any new employment (I note that this notice was not included in the record; I researched it myself because I wondered if and when petitioner became eligible for BC+).
5. On approximately November 1, 2013 petitioner began to work as an employee for [REDACTED] [REDACTED] (she actually started there in September but as an unpaid trainee). She did not receive her first paycheck from [REDACTED] until December 31, 2013, when she was paid for two months working in the amount of \$12,800. Petitioner did not report the [REDACTED] income either.
6. The county discovered the incomes in a state wage match in 2014. It requested verification from the employers; [REDACTED] responded but [REDACTED] did not.
7. Because the county worker did not know when the [REDACTED] job started, she averaged the fourth quarter [REDACTED] income over the three months of October through December. Under that scenario petitioner should have reported the income by November 10, 2013, and since the income put petitioner over the BC+ income limit, she was overpaid beginning December 1, 2013.
8. By a notice dated July 22, 2015, the county informed petitioner that she was overpaid \$2,956 in MA from December 1, 2014 through June 30, 2015, claim no. [REDACTED]. The amount was all MA paid on petitioner's behalf during those months; amounts paid for her daughter were not included. Petitioner sent the county an e-mail on August 9, 2015 stating that she was appealing the overpayment notices (petitioner also received an overpayment saying that she was overpaid FoodShare).

### 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.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

As a first point the question of timeliness of the appeal was raised. The Division of Hearings and Appeals first received this appeal on October 2, 2015, 72 days after the notice. However, as I explained during the hearing, petitioner's e-mail on August 9, 2015 stating that she was appealing the overpayment notices was sufficient to indicate the appeal, and was well within the 45 days to appeal.

Under BC+ rules in 2013 a person had to report an increase in income if income rose above 100%, 133%, 150%, and several addition levels of the Federal Poverty Level (FPL). BC+ Handbook, App. 27.3. Thus, while the November 26 notice said that petitioner had to report any new employment, the BC+ policy was that petitioner had to report income over 100% of the FPL. That did not occur until she received the pay check on December 31, 2013.

Ms. [REDACTED] argues that petitioner should have reported the [REDACTED] job immediately in November, when she started working there. However, petitioner could not guarantee that she would be paid until she actually received a pay check (especially in this instance where she worked for two months without being paid), so I find that she should have reported the income within ten days of the December 31 pay check.

Petitioner was overpaid, but as of February 1, 2014. I thus will order the county to amend the overpayment to exclude the amounts from December, 2013 and January, 2014, totaling \$1,410.

### CONCLUSIONS OF LAW

1. Petitioner was overpaid \$1,546 in MA for the period February through June, 2014 because she failed to report new income that started in December, 2013.
2. Petitioner was not overpaid MA in December, 2013 and January, 2014 because the unreported income did not put her over the FPL reporting threshold until December, 2013.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to amend overpayment claim no. [REDACTED] to be for \$1,546 for the months of February through June, 2014. The county shall do so within 10 days of this decision. In all other respects the petition for review 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 Madison,  
Wisconsin, this 18th day of November, 2015

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\sBrian C. Schneider  
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 18, 2015.

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