



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/169386

PRELIMINARY RECITALS

Pursuant to a petition filed October 13, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review decisions by the Wisconsin Department of Health Services, by the Milwaukee Enrollment Services agency, in regards to overpayments of Medical Assistance, a telephone hearing was held on November 4, 2015, at Milwaukee, Wisconsin.

The issue for determination is **1)Whether the Department correctly determined that the petitioner was overpaid \$2,358.89 of Medical Assistance/BadgerCare Plus benefits in the period of May, 2014 – April, 2015; and (2) Whether the Department correctly determined that the petitioner was overpaid \$619.80 of Medical Assistance/BadgerCare Plus benefits in the period of May – July, 2015.**

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:   
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County. He was the casehead of a BadgerCare Plus household in the period of May, 2014 through July, 2015. It was a 3 person household from May – October, 2014; and a 2 person household from November, 2014 – July, 2015.

2. On March 21, 2014, the petitioner reported a change in earnings, i.e., that his hours and wages were reduced from 80 hours per biweekly pay period to 50 hours per pay period. Verification was requested and the case was pended for that verification. See, Exhibit #1, at p. 12 (Case Comments for 3/21/14).
3. On March 24, 2014, the agency was informed that the petitioner's hours had been cut from 40 hours per week to 25 hours per week, as verified by a statement appearing to be from his employer, [REDACTED]. See, Exhibit #1, at p. 63; and at p. 12 (Case Comments for 3/27/14).
4. The agency budgeted the petitioner's March 21, 2014, reported income for the household's BC+ budget on March 28, 2014, to reflect the newly reported and verified lower earnings and on March 28, 2014, issued a Notice to the petitioner informing him that his 3 person household was eligible for BC + coverage without a premium, effective May 1, 2014. Eligibility was premised upon earned income of approximately \$853.92 (40 hours x \$11.86 per hour x 4 weeks = \$853.92).
5. On or about June 24, 2014, the petitioner's employer submitted an Employer Verification of Earnings form again indicating that the petitioner was working 18 hours per week, at \$11.86 per hour. See, Exhibit #1, at p. 65.
6. On June 27, 2014, the petitioner submitted a six month report form (SMRF) online that reported no changes in earned income.
7. On June 27, 2014, another statement appearing to be from his employer, [REDACTED], was submitted asserting that the petitioner was working 18 hours per week, at \$11.86 per hour. See, Exhibit #1, at p. 66; and at p. 12 (Case Comments for 7/1/14).
8. On September 22, 2014, the petitioner submitted a change report online stating that his daughter, [REDACTED] had moved out of the FS household.
9. On September 23, 2014, the agency issued a Notice informing the petitioner that BC+ coverage for [REDACTED] would end, and coverage for [REDACTED] and [REDACTED] would continue, effective November 1, 2015.
10. Effective November 1, 2014, [REDACTED] was removed from the petitioner's BC+ household as a consequence of the move-out report.
11. On January 29, 2015, another statement appearing to be from his employer, [REDACTED] LLC, was submitted asserting, dated January 27, 2015, and stating that the petitioner was working 18 hours per week, at \$11.86 per hour. See, Exhibit #1, at p. 67; and at p. 12 (Case Comments for 1/29/2015).
12. On or about June 10, 2015, the agency received a State Wage & Income Crossmatch (SWICA) report indicating that the petitioner's employers reported he had been paid \$8,777 in the 4th Quarter of 2014, when the agency had budgeted a total of \$2,561.76 for FS and MA benefits in at least that quarter of 2014 based upon the repeated reports of the petitioner, via change reports and received employer verification forms and letters, that he was working 18 hours per week at \$11.86 per hour.
13. The agency then referred the matter to the Public Integrity Unit as a possible overpayment case. On or about October 2, 2015, the overpayment unit procured a report from "The Work Number" of all of the petitioner's actual earnings from [REDACTED], d/b/a, [REDACTED] LLC, for the period of January 6, 2013, through October 2, 2015. See, Exhibit #1, at pp. 15 – 18.
14. On October 8, 2015, the agency issued two Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notices to the petitioner, with attached worksheets demonstrating the computation of the overpayments. The first notice informed the petitioner that the agency had determined that he had been overpaid \$2,358.89 of Medical Assistance/BadgerCare Plus in the period of May 1, 2014, through April 30, 2015, due to a misrepresentation of or failure to report earned income due to a client error. The second notice informed the petitioner that the agency had determined that he had been overpaid \$619.80 of Medical Assistant/BadgerCare Plus in the period of May - July, 2015, due

to a misrepresentation of or failure to report earned income due to a client error. See, Exhibit #1, at pp. 125 – 145.

15. Subsequently, the agency also requested that the petitioner provide his actual paystubs from [REDACTED] LLC, and he did so for the period of March, 2014, through August, 2015, on or about October 13, 2015. See, Exhibit #1, at pp. 19 – 57.
16. The agency used the actual gross income from The Work Number report for the computations of both overpayments described in Finding of Fact No. 14, above. The actual gross income reported in the paystubs described in Finding of Fact No. 15 are identical to the gross income contained in The Work Number report described in Finding of Fact No. 13, and both are identical to the gross earned income utilized in the computations of both overpayments. See, Exhibit #1, pp. 16-17; pp. 19 – 57; and pp. 125 -147.
17. On October 14, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the overpayment determinations described in Finding of Fact No. 14, above, and Exhibit #1, at pp. 125-147, on the basis that he did not provide the employer information that he was only working 18 hours per week, and that the overpayments subsequently found were not caused by him by misrepresentation, omission or failure to report income accurately. Rather, some unknown person incorrectly reported this income stream for him.
18. The BC+ monthly gross income limit for a three person household from May, 2014 – October, 2014, was \$1,649.17. The BC+ monthly gross income limit for a two person household from November, 2014, to December, 2014, was \$1,310.83. The BC+ monthly gross income limit for a two person household from January to July, 2015, was \$1,327.50. See, Exhibit #1, at p. 124.
19. The net capitation rates paid for the petitioner’s BC+ household were \$187.81 in each of the months of May, 2014, through December, 2014; \$201.71 in January – March, 2015; and \$204.06 in April – July, 2015. In addition, Medicaid paid cares-related costs of \$6.54 in May, 2014; \$31.71 in June, 2014; \$8.97 in March, 2015; and \$7.62 in May, 2015. All other months had paid cares of \$0. See, Exhibit #1, at p. 124.
20. Between May, 2014 and April, 2015, MA/BC+ paid capitation rates and actual cares for the petitioner’s BC+ household of \$2,358.89. See, Exhibit #1, at p. 127.
21. Between May 1 and July 31, 2015, MA/BC+ paid capitation rates and actual cares for the petitioner’s BC+ household of \$619.80. See, Exhibit #1, at p. 147.
22. At all times between May 1, 2014, and July 31, 2015, the petitioner had gross monthly income far above 100% of the Federal Poverty limit when using the household’s actual income for each month in the entire period, as computed in Exhibit #1, at pp. 16 – 17; and see, Exhibit #1, at p. 124. However, in the months of May, 2014, and May, 2015, and October, 2014, the agency erroneously counted a third bi-weekly pay period paystub for MA/BC+ budgeting purposes. MA/BC+, unlike the FoodShare program which uses a 4.3 average weeks in a month compute income, is calculated only using a 4 week average month. When excluding the third paystub in those three months, however, the petitioner remains with gross income far in excess of MA/BC+ household income limits too, by several hundred dollars in each of these three months.

## DISCUSSION

### **General Background**

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.

**1) Whether the Department correctly determined that the petitioner was overpaid \$2,358.89 of Medical Assistance/BadgerCare Plus benefits in the period of May, 2014 – April, 2015.**

The county agency seeks to recover overpayments of \$2,358.89 and \$619.80 from the petitioner because it contends that he failed to report his actual income initially in March, 2014, and then failed to subsequently correctly report his actual higher earned income from May, 2014 – July, 2015, and in fact reported on several occasions in that time period, albeit indirectly by the hand of his employer, income based only 18 hours per week of work when he actually was working about 40 hours a week every week throughout the period (with a couple of exceptions that do no change the outcomes here). The resultant correctly reported income would have left his household ineligible from May, 2014 through April, 2015; and from May through July, 2015; treated as separate time periods.

All medical assistance recipients must report changes to the agency within 10 days. Wis. Admin. Code, § DHS § 104.02(6). The petitioner, or someone acting on his behalf, filed a change report on March 21, 2014, that indicated his hours of work would drop from 40 hours per week to 18 hours per week. However, he kept working 40 hours per week, on average, from April, 2014, through July, 2015. And in fact, his gross income was nearly double, and sometimes triple, what the agency was budgeting throughout this period. He was accepting benefits premised upon income in the \$800-\$900 per month range when actually making \$2,000 - \$4,000 per month in the months in these two time periods. BadgerCare Plus is a means tested program, based upon a household's demonstrated need for assistance. This petitioner failed to act to correctly report his income and in fact caused at least 4 reports to be filed that indicated he was continuously working only 18 hours per week in these two overpayment period.

There is absolutely no question, based upon the uncontroverted Work Number actual gross wage data, which was specifically and fully corroborated by the petitioner's own pay stubs, as well as generally corroborated by the SWICA crossmatch report, that the agency has correctly calculated the petitioner's corrected MA budget on review in the overpayments. See, Findings of Fact Nos. 11 – 18; and see Exhibit #1, pp. 124-147; 16-17; and 19 – 57.

The only question is whether the reason the income was budgeted too low was due to agency error, and not client error.

The petitioner testified, as did his friend, [REDACTED] [REDACTED], that he does not know who sent in the reports from [REDACTED] LLC, that he was only working 18 hours per week. In effect, he asserts that he did not commit any error causing the overpayments, and that unknown persons at his

employer or even persons not employed at his employer, filed false reports on March 24<sup>th</sup>, June 24<sup>th</sup>, and June 27<sup>th</sup>, 2014, and again on January 29<sup>th</sup>, 2015.

And yet, it is clear that the petitioner himself filed the initial March 21, 2014, change report that his work hours had reduced from 80 hours to 50 hours per bi-week. See, Exhibit #1, at p. 12, Case Comment for March 21, 2014. The agency then requested verification of the change, and the case was pended for the verification, and six days later, the agency actually received a hand written verification letter dated March 24, 2014, *and* an Employer Verification of Earnings statement dated March 25, 2014, *both* identifying the statements as from the petitioner's employer [REDACTED], *both* identifying [REDACTED] as the employee of the concern, and *both* stating that he was working 18 hours per week at \$11.86 per hour. I find that testimony by [REDACTED] and [REDACTED] to be self-serving, evasive, uncorroborated by any other documentary or parol evidence, contradicted by the Case Comments for March 21, 2014, and the employer report documents of the four dates listed above (see, Exhibit #1, at pp. 63-67), contradicted by the simple fact that the petitioner's hourly work never dropped below 75 hours per biweekly period until nearly a year after the March 21, 2014, wage reduction change report of the petitioner (See, Exhibit #1, at pp. 16-17), and wholly incredible. I did not fall off the turnip truck yesterday. The petitioner did not accurately report his earned income, receiving far more in monthly income than was being budgeted in the period of May, 2014 – April, 2015.

Under this fact pattern, the Department has produced evidence far, far in excess of the preponderance of the evidence standard demonstrating that the petitioner was overpaid \$2,358.89 of MA/BC+ benefits in the test period due to a client error in underreporting his income for a prolonged period of time; and his omission to correct this in any event.

BadgerCare Plus overpayments are calculated by adding all medical expenses and capitation rate fees paid on behalf of the household, adding any premiums the household owed, and then subtracting any premiums the household has paid while incorrectly receiving benefits. The amount of the overpayment for each month depends upon the actual amount of income earned during that month *BadgerCare Plus Handbook*, § 28.4.2. The agency's determination of the petitioner's monthly income and the monthly capitation fees and paid expenses that went into the calculation of his overpayment are found in Findings of Fact Nos. 18-21, above. The petitioner did not have any premiums, nor was he entitled to any.

I find no material error in these calculations, and the petitioner does not challenge them. I noted in Finding of Fact No. 22 that the agency should have dropped the third paystub amounts in May & October, 2014, computations, but he still had far in excess of program limits from the two remaining paystubs in each of these months, so the agency error was harmless in those two months.

This overpayment determination must be sustained. Based upon this record, I must sustain the Department's determination that the petitioner was overpaid \$2,358.89 of MA/BC+ benefits in the period of May, 2014 – April, 2015.

**(2) Whether the Department correctly determined that the petitioner was overpaid \$619.80 of Medical Assistance/BadgerCare Plus benefits in the period of May – July, 2015.**

it remains clear, as stated in the discussion of issue #1, above, that the agency has fully and correctly budgeted the accurate corrected earned income in the computations for this second overpayment, and the petitioner has not only not contradicted the budget, but corroborated it. See, Findings of Fact Nos. 11 – 18; and see Exhibit #1, pp. 125-147; 16-17; and 19 – 57.

For the same reasons as discussed in issue #1, I find the petitioner and [REDACTED] to be not credible on the asserted partial defense that he did not report the lower income the agency used. I conclude that he did, and did so repeatedly. This client error caused the overpayment of MA/BC+ in the period of May-July,

2015, too. The Department's action in finding he was overpaid \$619.80 of MA/BC+ in this period must also be sustained on the preponderance of the evidence in this record. The error in using the third paystub in May, 2015, was likewise harmless error. Gross income was still too high even excluding the third paycheck of the month in May, 2015. I find no error, and the petitioner has not really pointed to any error in computation. The \$619.80 MA/BC+ overpayment is likewise sustained.

### CONCLUSIONS OF LAW

That the Department correctly determined that the petitioner was overpaid \$2,358.89 of Medical Assistance/BadgerCare Plus benefits in the period of May, 2014 – April, 2015 (MED Claim No. [REDACTED]); and \$619.80 of Medical Assistance/BadgerCare Plus benefits in the period of May – July, 2015 (MED Claim No. [REDACTED]); both due to client errors and misreporting of earned income affecting eligibility.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be, and the same hereby 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 20th day of November, 2015

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\sKenneth D. Duren, Assistant Administrator  
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 20, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability