



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/169748

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance, a telephonic hearing was held on December 01, 2015, at Green Bay, Wisconsin.

The issue for determination is whether the county agency is correctly seeking recovery of a BadgerCare (BC) overpayment totaling \$1,709.81 to the petitioner during the period of October 1, 2014 to April 10, 2015, due to his failure to timely report new employment and income from two employers ([REDACTED] and [REDACTED]) resulting in income above the BC income limit for a household of one and incorrectly paid monthly capitation fees.

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] ES Supervisor
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County who resides in a household of one.
2. The petitioner applied on December 6, 2013 for health care benefits at the federal marketplace, through the Affordable Care Act. He did not report any income on his application, and thus that application was referred to the State of Wisconsin for processing of that application as a BadgerCare (BC) application benefits for a household of one.
3. The county agency sent a March 21, 2014 Notice of decision to the petitioner at his correct address which stated that he was approved for health care in the Wisconsin BadgerCare Plus Standard plan as of April 1, 2014. That notice was not returned to the county agency as undeliverable.
4. The petitioner received BC benefits during the period of April 1, 2014 to April 10, 2015.
5. The county agency discovered through a May 18, 2015 SWICA wage match that Mr. [REDACTED] failed to timely report to the agency that he started new employment at [REDACTED] during August, 2014. That employment and income should have been reported to the agency by the 10th of the next month, September, 2014, but petitioner failed to report that income (which affected the October, 2014 BC eligibility and benefits for petitioner).
6. The petitioner also failed to timely report to the agency his employment at [REDACTED] for the period of October 1, 2014 through January, 2015.
7. The petitioner's earned income discovered by his SWICA wage match confirmed that petitioner's earned income was above the BC income eligibility limits for the entire BC overpayment period in question, resulting in an overpayment of \$1,709.81.
8. The petitioner's total household earned income during the period of October, 2014 through April 10, 2015 was above the 100% federal poverty level (FP) income eligibility limit of \$972.50 for a household of one from October, 2014 through January, 2015, and then that income limit increased to \$980.83 as of February, 2015. Thus, the agency incorrectly paid for petitioner's capitation fees of \$1,709.81 paid by BC due to his income above the BC income eligibility limits.
9. Petitioner admitted that his income was above the BC income eligibility limits.
10. The Department sent a September 15, 2015 BadgerCare Plus Overpayment Notice to the petitioner stating that he received an overpayment of BadgerCare benefits in the amount of \$1,709.81 during the period of October 1, 2014 to April 10, 2015, due to his misrepresentation of or failure to timely report his earned income resulting in income above the income eligibility limits and thus incorrectly paid BC capitation fees for petitioner.

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.

In the instant case, during the December 1, 2015 hearing, the county agency presented a well-organized and documented case to establish that it was correctly pursuing a BC overpayment against the petitioner due to client error. The county agency discovered through a May 18, 2015 SWICA wage match that Mr. [REDACTED] failed to timely report to the agency that he started new employment at [REDACTED] during August, 2014. That employment and income should have been reported to the agency by the 10th of the next month, September, 2014, but petitioner failed to report that income (which affected the October, 2014 BC eligibility and benefits for petitioner). The county agency representative is correct that the notices to the petitioner did state that if petitioner's household income increased the petitioner was required to report that income change to the county agency by the 10th of the next month. Thus, the petitioner owed incorrectly paid HMO capitation fees for himself. See Findings of Fact #5. As a result, the county agency correctly determined that the petitioner was overpaid \$1,709.81 in unpaid capitation fees.

The petitioner did not contest that his income was above the BC income eligibility limits. However, petitioner alleged unpersuasively during the hearing that he was "not aware" that he was approved for BC Plus benefits and thought that he was only on a waiting list. However, the county agency provided clear, reliable evidence that a March 21, 2014 Notice of Decision was sent to the petitioner at his correct address which stated that he was approved for the BadgerCare Plus Standard plan as of April 1, 2014. The agency representative further testified that the March 21, 2014 notice was not returned as undeliverable. In response, petitioner alleged he could not "recall" receiving that notice. Petitioner did not dispute that the March 21, 2014 notice was sent to him at his correct address. Furthermore, petitioner admitted that his earned income was above the BC income eligibility limits for each month in his BC overpayment period. Accordingly, based upon the above, I conclude that the county agency is correctly seeking recovery of a BadgerCare (BC) overpayment totaling \$1,709.81 during the period of October 1, 2014 to April 10, 2015, due to his failure to timely report new employment and income from two employers resulting in income above the BC income limit for a household of one and incorrectly paid BC monthly capitation fees.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a BadgerCare (BC) overpayment totaling \$1,709.81 during the period of October 1, 2014 to April 10, 2015, due to his failure to timely report new employment and income from two employers ([REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED]) resulting in income above the BC income limit for a household of one and incorrectly paid BC monthly capitation fees.

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 18th 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 18, 2015.

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