



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed November 9, 2015, under Wis. Stat., §49.45(5), to review a decision by Milwaukee Enrollment Services to recover Medical Assistance (MA), a hearing was held on December 8, 2015, by telephone.

The issue for determination is whether petitioner was overpaid MA because she did not report employment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner resides with her daughter. In August, 2014, petitioner reported a decrease in income from her job at [REDACTED]. The change was verified. By a notice dated August 25, 2014, the agency informed petitioner that BadgerCare Plus (BC+) MA would start September 1, 2014 with no premium based upon \$1,293 monthly income. The notice informed petitioner to report if her income increased in a month to more than \$1,310.

- [REDACTED]
3. On September 8, 2014, the agency sent another notice regarding FoodShare. That notice told petitioner to report if monthly income rose above \$1,705.
 4. Petitioner's hours increased in September, 2014, and her gross income that month rose to \$1,792.78. She did not report the increase.
 5. On November 21, 2014 petitioner completed a renewal. She reported no change in income, and her employer verified that she was working 20-30 hours per week at \$10.10 per hour. BC+ continued with no premium.
 6. Petitioner actually was being paid 40-45 hours per week during the entire period. Her monthly income from November, 2014 through March, 2015 regularly was over \$1,700.
 7. On March 24, 2015 petitioner reported that her employment at [REDACTED] ended. By a notice dated March 25, 2015, the agency informed petitioner that BC+ would continue in April with no premium based upon zero income. She needed to report if income rose above \$1,327.
 8. Petitioner actually just switched jobs in March. She started working at [REDACTED] March 9, 2015. Petitioner reported the job to the Wisconsin Works (W-2) agency, but not to the economic support agency. The W-2 agency also did not report the job to economic support. Verification of the job was received at the economic support agency on April 15, 2015, however.
 9. The agency discovered the higher income in June, 2015, and BC+ for petitioner ended July 1, 2015. The agency eventually determined that petitioner was overpaid BC+ beginning November 1, 2014 through June 30, 2015. Petitioner was ineligible for BC+ because her income was over the limit for adults. The agency reviewed payments made on petitioner's behalf to determine the overpayment.
 10. By a notice dated October 16, 2015, the agency informed petitioner that she was overpaid \$2,786.64 from November 1, 2014 through June 30, 2015, claim no. [REDACTED].

DISCUSSION

Prior to April 1, 2014, the income limit for BC+ was 200% of the Federal Poverty Level (FPL). State law changed effective April 1, 2014 following the passage of 2013 Wisconsin Act 20. As of that date the limit for caretaker parents was reduced to 100% of the FPL, which, for a two-person household was \$1,310.83 through January 31, 2015, and \$1,327.50 thereafter in 2015. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the BC+ Handbook, Appendix 50.1 for the limit. If a caretaker adult's income was higher than that amount, she was ineligible for BC+.

Under current policy BC+ recipients are required to report if income goes over the 100% of the FPL figure. Handbook, App. 27.3. As noted in the findings, notices sent to petitioner informed her of the reporting duty.

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

[REDACTED]

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 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.

In this case the overpayments for November, 2014 through March, 2015 were determined correctly. Petitioner's income rose above the reporting threshold in September, 2014, and she did not report the increase. Petitioner testified that she had vacation and personal hours included in her pay checks. The notices did not tell her to estimate her actual work hours versus other hours. It told her to report if income rose above specific amounts.

In March, 2015, petitioner reported the end of the [REDACTED] job. The economic support agency did not receive information about her new job, but it is clear that she reported it to the W-2 agency. Verification of it was provided, and I note a March 27 case note regarding child care assistance confirming that petitioner is working and authorizing child care. Thus any BC+ overpayment for April and May was due to agency error because the agency failed to take note of the new job despite petitioner reporting it to W-2 and the child care agency.

June, 2015 remains overpaid. I fail to see how petitioner could have received the March 25, 2015 notice that budgeted zero income and not realized that an error was made. That notice told petitioner to report if income went above \$1,327.50. Income was above that level right away in April, so at very least petitioner should have reported that her income was over that level by May 10, 2015. Thus the June overpayment remains effective. I will order the agency to reduce the overpayment by \$904.35, which was the overpayment amount for April and May, 2015.

CONCLUSIONS OF LAW

1. Petitioner was overpaid MA in November, 2014 through March, 2015, and June, 2015, because she failed to report when her income was higher than the mandatory income reporting threshold.
2. Although petitioner also was overpaid MA in April and May, 2015, the agency may not collect the overpayment because it was caused the agency error of missing petitioner's report of a new job that started in March, 2015.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to change overpayment claim no. [REDACTED] to be \$1,882.39 for the months of November, 2014 through March, 2015, and June, 2015. The agency shall rescind the overpayment amounts for April and May, 2015. The agency shall take the action 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 16th day of December, 2015

\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 December 16, 2015.

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