



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/170263

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 2015, under Wis. Stat., §49.45(5), to review a decision by the Lafayette County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on December 16, 2015, by telephone.

The issue for determination is whether petitioner was overpaid MA due to an unreported income increase.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Lafayette County Dept. of Human Services
627 Main Street
Darlington, WI 53530

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Lafayette County.
2. Petitioner and her husband have received BadgerCare Plus (BC+) MA and FoodShare since 2014. They operate a farm as their primary employment; petitioner's husband also does car restoration. Petitioner began to work at [Redacted] Inc. in July, 2014, initially making between \$250 and \$570 per month.

3. Petitioner filed a six-month report on September 4, 2014. She did not report the [REDACTED] income. She also failed to report the [REDACTED] income in a March, 2015 review and a September, 2015 six-month report.
4. Petitioner had an MA review in March, 2015. The county used the couple's 2013 self-employment tax forms to determine ongoing benefits because the 2014 tax returns were not yet complete. The 2013 taxes showed a monthly self-employment income of \$587.74.
5. On September 10, 2015 petitioner filed a six-month report form for FoodShare purposes. At that point the county worker requested a copy of the 2014 self-employment income tax return; the tax return was received by the county on October 5.
6. While processing the September, 2014 six-month report the worker discovered the [REDACTED] job through a state match.
7. For BC+ purposes the 2013 tax return showed monthly self-employment income to be \$587.74. The 2014 tax return showed monthly self-employment income to be \$437.74.
8. The worker reviewed petitioner's [REDACTED] income monthly back to October, 2014, when it first would have budgeted had petitioner reported it on her September, 2014 six-month report.
9. Petitioner's household income rose above the BC+ income limit in September, 2015. Petitioner earned \$928 from [REDACTED] in September and \$991 in October. Adding those amounts to the self-employment of \$437.74 brought income in each month above the BC+ income limit of \$1,327.50. Petitioner's [REDACTED] income decreased in November, 2015.
10. By a notice dated October 6, 2015, the county informed petitioner and her husband that they were overpaid \$896.98 in MA during September and October, 2015, claim no. [REDACTED]. The claim was for MA payments made on the couple's behalf in those two months.

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.” BC+ Handbook, App. 28.4.2.

There is no question that petitioner failed to report her [REDACTED] job when required. The issue, however, is whether she received BC+ she was not eligible to receive. Typically in such a case the overpayment is determined by examining the benefit the household would have been eligible to receive had the income been reported correctly.

In this case, I note first that from October, 2014 through August, 2015, petitioner’s monthly [REDACTED] income was at most \$570, but was usually in the \$300-\$450 range. Had petitioner reported her job on her September, 2014 SMRF, the income would have been budgeted, but petitioner would have remained eligible for BC+ because the approximately \$500 per month income would have been below the BC+ limit for a two-person household. When the \$587 monthly self-employment income from the 2013 tax return was added in March, 2015, the total monthly income of approximately \$1,087 would have remained below the BC+ income limit, and the household would have remained eligible.

Petitioner’s monthly income did not actually rise to be above the mandatory reporting amount until September, 2015, when petitioner’s [REDACTED] income shot up from \$254 in August to \$928 in September. That income, plus the monthly self-employment income from the 2014 taxes of \$437.74, brought September, 2015 income up to \$1,365. That made September the first month in which income rose above the required reporting amount of \$1,327.50. See BC+ Handbook, App. 27.3; BC+ recipients must report an income change when income rises about 100% of the Federal Poverty Level (FPL), which is \$1,327.50 for a two-person household.

The point is that, even if petitioner had reported the [REDACTED] income at any time, it would not have affected eligibility until after petitioner’s income increased in September, 2015. In fact, the [REDACTED] job was discovered by the county in early September, and the initial budgeted amount was \$420 per month based upon her most recent paychecks. See the September 22, 2015 Notice of Decision. Therefore, if petitioner reported the increase by October 10, 2015 as required, the increase would affect BC+ beginning November 1, 2015.

I conclude therefore, that petitioner was not overpaid BC+ in September and October, 2015 despite her total failure to report her [REDACTED] income until the county worker discovered it in September, 2015. We also know now that the [REDACTED] income decreased in November, and the couple was made eligible for BC+ again effective November 1, 2015.

CONCLUSIONS OF LAW

Petitioner was not overpaid BC+ in September and October, 2015 despite petitioner’s failure to report employment at [REDACTED] Inc. Had she reported the income correctly household income would not have risen above the 100% of the FPL until September, 2015, and the increase would not have effected BC+ eligibility until November, 2015.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind MA overpayment claim no. [REDACTED] and to cease recovery of it. The county shall do so within 10 days of this decision.

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 23rd day of December, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 23, 2015.

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