



STATE OF WISCONSIN

In the Matter of



DECISION

MOP 167739

The attached proposed decision of the Administrative Law Judge dated September 15, 2015, is hereby adopted as the final order of the Department.

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, WI 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 request (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 11th day of December,
20__

Thomas J. Engels, Deputy Secretary
Department of Health Services



FH
[REDACTED]

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

In the Matter of

[REDACTED]

PROPOSED DECISION

MOP/167739

PRELIMINARY RECITALS

Pursuant to a petition filed August 4, 2015, under Wis. Stat., §49.45(5), to review a decision by the Jefferson County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on September 9, 2015, by telephone.

The issue for determination is whether petitioner is liable for an MA overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By:

[REDACTED]
Jefferson County Dept. of Human Services
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County.
2. Petitioner and her husband filed an MA application inline on the Federal Marketplace on December 16, 2013. They were told by a county worker that no new applications were being processed, and that they should call back in April, 2014 if they were still interested.
3. In March, 2013, the state agency processed the December, 2013 Marketplace application. By a notice dated March 13, 2014, the agency informed petitioner that she and her husband were eligible for BadgerCare Plus (BC+) MA effective April 1, 2014 with no monthly premium. The

notice told them that they had to report increases in income. Petitioner and her husband do not recall getting or seeing that notice.

4. Petitioner obtained full-time employment in January, 2014 and became eligible for insurance through the employment. They did not call back the MA agency after that and did not use MA at all.
5. The income showed up at the county agency because of a state wage match. The county worker obtained petitioner's income information and determined that the household went over the BC+ limit effective December 1, 2014. Because the MA program was paying monthly capitation fees, it was determined that the capitation fees were overpaid from December 1, 2014 through March 31, 2015. BC+ closed after March 31, 2015 because petitioner did not do an annual review.
6. By a notice dated June 4, 2015, the agency informed petitioner that she and her husband were overpaid \$3,318.30 from December 1, 2014 through March 31, 2015 because they did not report an increase in income, claim no. [REDACTED]

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.

The simple solution to this appeal would be to say that petitioner applied for MA, was informed about the eligibility, and did not report the employment that would have ended eligibility. The law does not say that the failure to report must be intentional; the failure can be due to a mistake or misunderstanding. Clearly there was a misunderstanding here. Petitioner and her husband thought that they had to request MA again in April, 2015, and they assumed that there was no MA eligibility because they did not ask for it.

I am aware of how confusing the Marketplace start-up was at the time. Many applications and appeals were misplaced. Incorrect information was provided. The new program was scheduled to begin January 1, 2014, but then was delayed by the legislature until April 1, 2014. It is believable to me that a worker might have told petitioner that they should call back in April, 2014. It also is believable that petitioner and her husband did not seek MA after the original December, 2013 application, because they obtained alternate coverage. The March 13, 2014 Notice of Decision is a problem. It was mailed to the correct address, and although petitioner and her husband both testified to never seeing it, it is unlikely that it was lost in the mail. It is possible, even probable, that they received it and did not look at it closely or understand its importance.

Under the unique circumstances of this case, I conclude that petitioner and her husband should not be liable for the overpayment. They were given misleading information about the need to actually ask for MA again in April, and I believe that they had no idea they were eligible for MA during the entire period. Thus although they technically had a duty to report income, they did not realize they had the duty, especially since petitioner obtained the employment two months prior to March, 2014 when the agency processed the application.

I will send this decision as proposed because the Deputy Secretary should make the determination of whether this situation warrants going outside the absolute letter of the law as written concerning MA overpayment.

CONCLUSIONS OF LAW

Petitioner should not be held liable for the overpayment in this case because she and her husband were unaware of their MA eligibility and thus had no reason to report the increased income that would have resulted in ineligibility and the overpayment.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind overpayment claim no. [REDACTED] and to cease recovery of it.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Health Services for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 15 day of September, 2015



Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals