



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/168919

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on December 10, 2015, at Racine, Wisconsin.

The issue for determination is whether any overissued MA is subject to recovery.

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: Jelena Jones

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Racine County.

2. She received MA (BadgerCare Plus) in Wisconsin from at least March 2012- November 2012.
3. The petitioner was employed with [REDACTED] from at least January 2012 - December 2012. See Exhibit 2.
4. In March 2015 the agency became aware of the wage discrepancies used in petitioner's case through an alert from the State Wage Income Collection Agency (SWICA). Exhibit 2. It thereafter received verifications of petitioner's wages January 2012 - December 2012 from her employer. Exhibit 2.
5. On August 11, 2015 the agency issued a notice of MA overpayment to the petitioner stating that she had been overpaid MA in the amount of \$405 from August 2012- November 2012 (claim # [REDACTED]) because petitioner's income increases had not been reported. See Exhibit 7 and 8.

DISCUSSION

The Department may recover any overpayment of MA that occurs because 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 [BadgerCare].
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.

Wis. Stat. §49.497; see also *Medical Eligibility Handbook*, §22.2.1, available online at <http://www.emhandbooks.wi.gov/meh-ebd/> and *BadgerCare Plus Eligibility Handbook (BCP Handbook)*, §28.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The MA recovery statute clearly provides for recovery of MA when a recipient or representative fails to report income which would affect eligibility. The failure does not have to be intentional. The agency did not suggest that it was making a fraud case here. Even an honest mistake of failing to report income is subject to the recovery rights for the agency.

In March 2012, when a BCP household's income exceeded 100% of the federal poverty level (FPL) for its group size due to an increase in earned income, that household was granted a BCP extension of 12 months. *BCP Handbook*, §18.1 (version #12-01) available online at <https://www.dhs.wisconsin.gov/publications/p1/p10171-12-01.pdf>. In March 2012, 100% of the FPL for a group of 3 was \$1545 and petitioner's income exceeded that amount. See, e.g., *FoodShare Wisconsin Handbook* (version #12-01), available online at <https://www.dhs.wisconsin.gov/publications/p1/p16001-12-01.pdf>; see also Exhibit 2. Under that policy, while under the extension, the household did not have to pay premiums. *Id.* That, however, changed effective July 1, 2012 with the following policy stating which individuals must pay a premium for BCP benefits:

1. Children in families with income over 200% of the Federal Poverty Level (FPL),
2. Parents, stepparents and caretaker relatives with income over 133% through 200% of the FPL,
3. Parents, stepparents and caretaker relatives with income over 133% in a BC+ Extension, and

4. Self-employed parents, stepparents and caretaker relatives with income above 200% of the FPL before subtracting the depreciation but below 200% of the FPL after subtracting the depreciation.

BCP Handbook, §19.1 (version #12-02); available online at <https://www.dhs.wisconsin.gov/publications/p1/p10171-12-02.pdf>.

Accordingly, the agency here now argues that petitioner would have had to pay a premium under the new policy effective July 2012, and began the overpayment period for August 2012, ending in November 2012. The overpayment is allegedly based on the amount of the monthly premiums she would have been required to pay had the agency been budgeting her actual income. However, the agency's calculations are incorrect in using the premium amounts that it did; it used an older policy version than in effect at the time of the overpayment period. Accordingly, I cannot find that the agency is correctly seeking this overpayment, and will order that it be rescinded.

CONCLUSIONS OF LAW

The agency has not met its burden of proof to establish an overpayment of MA benefits against the petitioner.

THEREFORE, it is

ORDERED

That the petition herein be remanded to the agency with instructions to rescind and/or cease collection efforts for the MA overpayment in the amount of \$405 from August 2012- November 2012 (claim # [REDACTED]) against the petitioner. These actions shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 Milwaukee,
Wisconsin, this 6th day of January, 2016

\sKelly Cochrane
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 January 6, 2016.

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