



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/169566

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on February 16, 2016, by telephone. Hearings set for November 24, 2015, January 4, 2016, and February 3, 2016, were rescheduled at the petitioner's request. The hearing record was extended for document review.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid MA or BCP benefits from May 2013 through April 30, 2015.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted], Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Sauk County.

1. Prior to May 2013, the petitioner's household resided in [REDACTED]. On May 26, 2013, the petitioner's wife applied online for FoodShare and BadgerCare Plus (BCP) as a Wisconsin resident. She claimed a household of six persons: herself, her husband, the child C.S., and three other children. The only income reported was the husband's income at [REDACTED]. The household was found to be eligible, and BCP benefits began without premiums.

Household composition

2. In August 2013, per court order, the child C.S.'s placement was changed to be 100 percent with her mother in [REDACTED], with the exception of holiday breaks. C.S. was no longer a household member beginning with September 2013. Per the order, she was to spend a summer break with the petitioner/husband from June 14, 2014 to the commencement of school that fall (date unspecified). The petitioner's wife reported to the Department in September 2013 that C.S. was no longer in the household.
3. In November 2015, the petitioner's wife signed off on an electronic Six Month Review Form, which had pre-populated C.S.'s name as a household member. The petitioner asserts that she telephoned the Department's Call Center to question the child's inclusion before signing off, and was told that the Department had all necessary paperwork for understanding the child's status. The petitioner's wife signed off on additional periodic review forms in April and November 2014, which showed C.S. as a household member.

Husband's income

4. The husband's [REDACTED] income did not make the household ineligible or premium-liable at the time of the 2013 application. The Department's July 2, 2013 eligibility notice advised the petitioner to report within 10 days of the following month if the household monthly gross income exceeded \$3,356, as this would affect benefits. *See*, Exhibit 2E. The household income did exceed \$3,356 in June 2013, due to the husband's increased earnings (\$4,253 in June). They did not report the increased income at any time in 2013. The husband's gross earnings exceeded the reporting threshold every month from June through December 2013. *E.g.*, \$4,625 in July, \$4,437 in August, \$4,784 in September, \$5,058 in October, \$3,600 in November and \$4,219 in December, 2013. This higher income meant that the household's monthly income exceeded the threshold for premium payment, thereby creating an overpayment due to unpaid premiums. However, adult premium liability was only for the wife from September 2013, forward, as the petitioner-husband became subject to a child support noncooperation sanction, and was therefore not covered from then onward.
5. The husband grossed the following amounts from [REDACTED] in 2014: \$4,863.17 in January, \$2,574.51 in February, \$2,955.67 in March, \$3,137.88 in April, and \$3,025.58 in May. He changed jobs and began employment with [REDACTED]. His gross wages from [REDACTED] were \$412.64 in May \$3,831.20 in June, \$3,189.41 in July, \$3,417.03 in August, \$3,725.42 in September, \$3,780.31 in October, \$4,417.16 in November, and \$3,438.32 in December.
In 2015, his gross [REDACTED] wages were \$3,601.92 in January, \$4,467.85 in February, \$5,363.76 in March, \$4,747.10 in April and \$4,440.68 in May.
6. The petitioner and his spouse rented out a house in [REDACTED] after moving to Wisconsin. Per their tax return transcript, gross 2013 rent receipts were \$18,000, with deductible expenses being \$22,322, of which depreciation comprised \$10,371. For BCP calculation purposes in 2013, depreciation was added back in to countable income in deciding whether the petitioning adult was subject to a premium. This means that for 2013, the net rental property income was \$6,049 annually/\$504 monthly for premium threshold purposes. *BCPEH*, § 16.4.3.2.3 (10-1-2013).

Self-employment

7. The petitioner's wife had a self-employment enterprise, [REDACTED] (also d/b/a/ [REDACTED]) in [REDACTED]. She ended the business upon moving to Wisconsin in May

2013. Her [REDACTED] registration for [REDACTED] expired in July 2013. She began a new self-employment business, [REDACTED], in November 2013. She did not begin profitable activity with her business in Wisconsin until 2014.

8. In 2014, the wife’s self-employment business received gross self-employment receipts of \$54,622. Business expenses, other than depreciation, totaled \$49,338 (\$76,924-27,586 depreciation). Including the depreciation deduction (allowable as of 1/1/14), the business suffered a new loss in 2014.
9. The adult BCP eligibility income limit was changed in Wisconsin law, effective April 1, 2014, to 100% FPL. For a five-person household, 100% FPL in 2014 was \$2,297.50. The law change also allowed the agency to subtract self-employment business losses from other income. If the household exceeded this limit, the adults were not eligible. The wife and their children continued to be covered by BCP throughout 2014. In addition to the earnings and rental income referenced above, the household received child support of \$558 in December 2013, and \$583 monthly from January 2014 through June 2015.
10. The five-person 100% FPL amount remained at \$2,297.50 for January 2015. It increased to \$2,367.50 for February 2015 and thereafter. The husband grossed \$3,601 in January 2015, and the wife was ending her self-employment business. The wife was ineligible for the January through April 2015 coverage. The agency has opted not to pursue recovery for the adult coverage for those months, as there apparently was an element of agency error in continuing that adult coverage. The child C.S. continued to be covered, incorrectly, from January through April 2015.
11. On September 29, 2015, MA/BCP overpayment notices were sent to the petitioner, advising that he had been overpaid \$5,490.56 in MA/BCP for the May 2013 through April 2015 period (claims # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED]). The overpayment was due to client error. These claims can be further broken down as follows:

<u>Adult claims</u>		<u>Child claims</u>	
# [REDACTED]	\$ 3459.39 (thru 4/14)	# [REDACTED]	\$ 1257.55
# [REDACTED]	<u>160.07</u> (Nov. 2014)	# [REDACTED]	<u>613.55</u>
Total	3619.46		1871.11

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect 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. Wis. Stat. §49.497(1). See also, *BCP Eligibility Handbook (BCPEH)*, §28.1, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The first issue in this case is the determination of correct household size. The petitioner acknowledges that the child C.S. was not a household member from September 2013 forward. The agency apparently believes that the child was not in the household for June through August 2013. Because this is an overpayment case, the agency has the burden of establishing that the child was not in the household in the summer of 2013, and that burden has not been met. Thus, six was the correct number of household members from June through August 2013. Thereafter, the correct household size was five.

The petitioner contends that his wife contacted the agency in September 2013, to report the change in the child C.S.’s status, and that the agency did not remove the child from the case. I am giving the petitioner the benefit of the doubt on this factual question, so leaving the household size at six until the next case review shall be considered agency error, on the household size question only. However, the petitioner’s

wife continued to agree that the household size was six at the periodic case reviews in November 2013, April and November 2014, and again in 2015. Those repeated failures to correct the household size were not caused by the agency, so the household size/income limit should be adjusted to five effective with December 1, 2013. I did not believe the wife's self-serving testimony that a Call Center representative told her to ignore the household size discrepancy in November 2013.

The Department's theory for beginning the overpayment with June 2013 appears to be based primarily on the false representation of household size theory (I accepted the wife's evidence that she closed her [REDACTED] business when moving here). Because I disagree with that theory for June – August 2013, the MA/BCP overpayment shall not start with the June or July 2013 benefits. The overpayment does begin with August 2013, however. The petitioner should have reported that the household income exceeded the reporting threshold in July, affecting August 2013 benefits. If he had timely reported the higher [REDACTED] income, the agency would have realized that he was over the \$3,055/\$3,501 threshold for requiring a monthly adult premium. Also, the household began receiving rental property income at some point in the summer of 2013, which should have been reported.

2013: To calculate the household's income, the MA/BCP program looks at gross monthly earnings, without the multiplier used in the Food Share program. C.S. should have not been covered for December 2013 due to lack of Wisconsin residence, so the \$53.14 capitation fee paid by MA/BCP for her for December is an overpayment. A BCP adult was subject to a premium liability if household income exceeded 133% of the federal poverty level (FPL). For six persons, 133% was \$3,501 in 2013. This household's income for August was \$4,941 (\$4,437 [REDACTED] + \$504 rent), so the household adults were subject to a premium liability. This pattern continued through the end of the year. By December 2013, the household size should have been five, with 133% of FPL being \$3,056. The household income for December 2013 was \$4,723 (\$4219+\$504), so the household adults were subject to a premium liability.

2014: The adult BCP eligibility income limit was changed in Wisconsin law, effective April 1, 2014, to 100% FPL. For a five-person household, 100% FPL in 2014 was \$2,297.50. Here, the husband's earnings, plus \$583 child support, put the petitioner over the grandfathered premium threshold from January through April. The case was reviewed in April, to compare income against the new income limit. Although the adult income eligibility limit was lowered, the law change also directed the agency to (1) subtract self-employment business losses from other income, and (2) not count child support received. *BCPEH*, § 16.5, #2. The husband's income *minus* the wife's self-employment losses, caused the household's income to be calculated at 83% FPL or less from May through October 2014. The wife was therefore eligible for adult BCP in those months, and no adult overpayment amount is due for those months. For November 2014, household income attained 110% FPL (\$4,417 husband wages - \$1,858.50 self-employment loss from tax return), so the wife was ineligible for the coverage she received. For December 2014, the agency incorrectly relied on the husband's net, rather than gross, wages to continue coverage for the wife. *See*, County Exhibit 3. Because the December calculation was an agency error, no overpayment liability exists for the petitioner for that month. Overpayments for the child C.S. continued throughout 2014 in the form of the monthly capitation fee, because the child was not a Wisconsin resident.

2015: The petitioner contends that the [REDACTED] rental property was sold in 2015, and there is no evidence to the contrary in the record. She also contends that she ended her self-employment. The remaining household income was the husband's January earnings of \$3,601.92, which exceeded the 100% FPL limit. The five-person 100% FPL amount remained at \$2,297.50 for January 2015, and increased to \$2,367.50 for February 2015 and thereafter. The case closed effective May 1, 2015, due to excess income. The agency did not include an overpayment liability for the wife for January through April 2015, because the coverage error included an element of agency fault. However, the agency continued to incorrectly cover the child C.S., which was not due to agency error. The overpayment liability for C.S.'s monthly capitation fee is therefore recoverable.

Because the overpayment amounts being pursued here were caused by client error, the agency is allowed to make this recovery effort, as modified in my Conclusions below. Although the petitioner-husband was not covered by BCP during a substantial portion of the overpayment period, he remains co-liable for the overpayment due to his status as a spouse residing within the BCP household. *BCPEH*, § 28.4.4.

CONCLUSIONS OF LAW

1. The petitioner's household was not overpaid MA/BCP from June 2013 through July 2013.
2. The petitioner incurred recoverable MA/BCP overpayments for the child C.S. for the December 2013 through April 2015 period only. There shall be no recovery for C.S. prior to December 2013.
3. The petitioner's household incurred recoverable MA/BCP overpayments related to premium liabilities for August, 2013, through April 2014.
4. The petitioner's household incurred a recoverable BCP overpayment in November 2014.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to (1) cease recovery efforts regarding MA/BCP for June and July 2013, and (2) re-calculate the amount of the petitioner's MA/BCP overpayments for August through November 2013, in accord with Conclusions #2 above. 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 Madison,
Wisconsin, this 20th day of April, 2016

\sNancy J. Gagnon
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 April 20, 2016.

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