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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/169694

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance, a telephonic hearing was held on December 01, 2015, at Madison, Wisconsin. At the request of the parties, the record was held open for written closing arguments to be submitted to the Division of Hearings and Appeals (DHA). Both parties timely submitted their closing argument to DHA which are received into the hearing record.

The issue for determination is whether the Department is correctly seeking recovery of a Wisconsin BadgerCare (BC) overpayment of \$900.10 from the period of April 1, 2015 to August 31, 2015, due to petitioner's failure to timely report to the agency her move from Wisconsin to [REDACTED] resulting in incorrectly paid capitation fees for those five months due to her BC non-financial ineligibility during that period.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED], PARIS Interstate agent  
Public Assistance Collection Unit  
Office of the Inspector General  
PO Box 309  
Madison, WI 53701

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Wisconsin who moved to the State of [REDACTED] during March, 2015.
2. The petitioner was incarcerated in the [REDACTED] Jail from December, 2014 through February, 2015.
3. The petitioner signed and filed her January 5, 2015 application for Wisconsin BadgerCare (BC) Plus benefits, and was approved for the period of January 1, 2015 through August 31, 2015. See Exhibit E. In that application, petitioner indicated that she resided in Wisconsin, but that her mailing address was to her aunt's ([REDACTED]) home at [REDACTED], [REDACTED]. See Exhibit C.
4. The county agency sent a January 22, 2015 notice to the petitioner at her correct mailing address ([REDACTED]) stating that she was approved for Wisconsin BC benefits as of January 1, 2015, and that she was required to report any changes in her address to the agency within 10 days. See Exhibits D and E.
5. The petitioner applied for Medical Assistance benefits through the State of [REDACTED] on February 5, 2015, and was approved. See Exhibit F.
6. The petitioner failed to timely report to the Wisconsin agency that she moved to the State of [REDACTED] during March, 2015, and failed to timely report to the Wisconsin agency that she applied for Medical Assistance benefits from the State of [REDACTED] on February 5, 2015.
7. The Department sent an October 20, 2015 BadgerCare (BC) Overpayment notice to the petitioner at her aunt's ([REDACTED]) correct [REDACTED] mailing address stating that petitioner received a \$900.10 BC overpayment during the period of April 1, 2015 to August 31, 2015, due to her failure to timely report to the Department her change of address by moving out of state. See Exhibit A. The \$900.10 overpayment was due to incorrectly paid monthly capitation fees of \$180.02 for 5 months because she was non-financially not eligible for Wisconsin BC benefits.

## DISCUSSION

The Medicaid Eligibility Handbook provides the following regarding Residency:

### **6.1 Residency Eligibility**

#### 6.1.1 Residency Eligibility Introduction

#### **A person must be a Wisconsin resident to be eligible for Medicaid. S/he must:**

1. **Be physically present in Wisconsin.** There is no required length of time the person has to have been physically present, **and**
2. Express intent to reside here (See [6.2 Intent to Reside](#)).

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (BCP) payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report changes in income or non-financial information, which in turn gives rise to a BCP overpayment:

**49.497 Recovery of incorrect medical assistance payments. (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.**

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

*(Emphasis added)*

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook(BCPEH)*, §28.1, online at <http://www.emhandbooks.wi.gov/bcplus/> :

### **28.1 OVERPAYMENTS.**

An "overpayment" occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. Concealing or not reporting income.
2. Failure to report a change in income.
3. Providing misinformation at the time of application regarding any information that would affect eligibility.

### **28.2 RECOVERABLE OVERPAYMENTS.**

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

#### **1. Applicant /Member Error**

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. **Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.**

...

*(Emphasis added).*

**2. Fraud. ...**  
*BCPEH*, §28.1 – 28.2.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

During the December 1, 2015 hearing or in her written closing argument, petitioner was unable to refute with any reliable evidence that she was eligible to receive BC benefits during the period of January 1, 2015 to August 31, 2015 through the State of Wisconsin. Petitioner was unable to present any reliable evidence to refute or undermine the county's substantial testimony or evidence that petitioner failed to timely report her move to [REDACTED], that she was mailed a January 22, 2015 notice that her January 5, 2015 Wisconsin BC application had been approved, or that on February 5, 2015 she failed to timely report to the agency that she had applied for MA benefits through the State of [REDACTED].

During the hearing and in her closing argument, petitioner attempted unpersuasively to argue several reasons for why she should not be required to repay the \$900.10 BC overpayment. None of her arguments were convincing. Petitioner asserted that she was not aware that she had been approved for BC in Wisconsin. However, the Department established that a January 22, 2015 notice was sent to the petitioner at her correct address indicating that she was approved for BC as of January 1, 2015. Exhibit E. That notice was not returned as undeliverable, and specifically stated that petitioner was required to report any change of address within 10 days of that change. Exhibit D. The petitioner also argued that she did not use her BC benefits during the overpayment period, and thus should not be required to repay the overpayment. However, the State of Wisconsin paid monthly capitation fees on petitioner's behalf of \$900.10 whether or not petitioner used her BC benefits. Finding of Fact #7 above. In addition, petitioner argued that she did not timely open her mail which was correctly sent to her at her aunt's mailing address, and thus she alleged to not be informed of her BC eligibility. It was the responsibility of petitioner to open and review her mail in a timely fashion which she failed to do. Finally, the petitioner was informed in her January 5, 2015 BC application (which she signed) that she understood her rights and her responsibilities. On page 4 of that application, petitioner was informed of her responsibility to report address changes within 10 days (Exhibit D).

While the petitioner was argumentative during the hearing, she did not offer any reliable evidence to refute the accuracy of the county agency's BC overpayment determinations or calculations. Overall, petitioner's credibility was questionable due to inconsistencies and contradictions in her testimony, and for the reasons explained above. Accordingly, for the above reasons, I conclude that the Department is correctly seeking repayment of a BadgerCare (BC) overpayment of \$900.10 from the period of April 1, 2015 to August 31, 2015, due to petitioner's failure to timely report to the agency her move from Wisconsin to [REDACTED] and her February 5, 2015 MA application in [REDACTED] resulting in incorrectly paid capitation fees for those five months due to her Wisconsin BC non-financial ineligibility during that period.

#### CONCLUSIONS OF LAW

The Department is correctly seeking recovery of a Wisconsin BadgerCare (BC) overpayment of \$900.10 from the period of April 1, 2015 to August 31, 2015, due to petitioner's failure to timely report to the agency her move to [REDACTED] or her February 5, 2015 MA application in [REDACTED] resulting in incorrectly paid capitation fees for those five months due to her BC non-financial ineligibility during that period.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 21st day of March, 2016.

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\sGary M. Wolkstein  
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 March 21, 2016.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability