



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/171921

PRELIMINARY RECITALS

Pursuant to a petition filed February 05, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Clark County Department of Social Services in regard to Medical Assistance, a hearing was held on March 15, 2016, at Neillsville, Wisconsin.

The issue for determination is whether the agency correctly determined that petitioner is liable for an MA overpayment of \$860.40.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: [Redacted]

Clark County Department of Social Services
Courthouse
517 Court Street, Rm. 502
Neillsville, WI 54456-0190

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Clark County.
2. Petitioner applied for MA on 2/16/15 asserting that she was pregnant.

3. Petitioner was enrolled in BC+ standard plan and notified of this enrollment by notice dated 3/6/15.
4. Petitioner miscarried on 3/18/15. Petitioner did not report the miscarriage to the agency. Petitioner continued enrollment in BC+.
5. On 12/29/2015 the agency sent notice to petitioner informing her that she had received and overpayment of MA from 5/1/15 to 9/30/15.
6. Petitioner appealed.

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:

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.

Wis. Stat. §49.497(1). (Note: *Italicized for emphasis.*) 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/>.

Department policy then instructs the agency, in a "no eligibility" case, to base the overpayment determination on the actual MA/BCP charges paid.

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.

Applicant/Member error occurs when there is a:

- a. Misstatement or omission of facts by a member, or any other person responsible for giving information on the member's behalf at a BC + application or review.
or
- b. Failure on the part of the member, or any person responsible for giving information on the member's behalf, to report required changes in financial (27.3) (income, expenses, etc.) or **non-financial (27.2) information that affects eligibility**, premium, patient liability or cost share amounts.

An overpayment occurs if the change would have adversely affected eligibility, the benefit plan or the premium amount.

BCPEH, §28.1 – 28.2 (emphasis added).

Pregnant women are non-financially eligible for BC+.

2.1 BadgerCare Plus Non-Financial Program Requirements

The following individuals are non-financially eligible for BadgerCare Plus:

1. Children under 19,
2. **Pregnant Women,**

BCPEH § 2.1 (emphasis added). In this case, the agency asserts that the petitioner failed to report that she had miscarried on 3/18/15 and was no longer pregnant.

8.1 Pregnant Women

Note: This chapter does not apply to pregnant women in the BadgerCare Plus Prenatal Program.

A pregnant woman who is enrolled in BadgerCare Plus stays eligible for:

- The balance of the pregnancy, and
- An additional 60 days after the last day of pregnancy through the end of the month in which the 60th day occurs.

The decision about her eligibility does not need to be made prior to the termination of the pregnancy, but the application must be filed before the end of the pregnancy in order for her to remain enrolled as a pregnant woman for the 60 days after the pregnancy ends.

Given this rule, petitioner remained eligible for BC+ until the end of May 2015. But, it remains that MA overpayments are recoverable only if caused by client error. The overpayment in this case was indeed caused by client error because petitioner has an obligation under *BCPEH* 28.2 to report any “changes in... non-financial information that affects eligibility.” Petitioner was aware that her eligibility was based on her pregnancy. She, thus, had a duty to report when that situation changed. The agency must recalculate the overpayment amount to allow for continued eligibility through the end of May 2015.

CONCLUSIONS OF LAW

1. The petitioner was overpaid MA due to her failure to report the miscarriage.
2. Petitioner remained eligible for MA until the end of May 2015.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency to recalculate the overpayment amount beginning the overpayment as of June 1, 2015. This must be completed within 10 days. In all other respected the overpayment determination is affirmed.

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 19th day of April, 2016

\sJohn P. Tedesco
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 19, 2016.

Clark County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability