



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/172191

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Jefferson County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on March 30, 2016, at Jefferson, Wisconsin.

The issue for determination is whether the petitioner was overpaid BCP benefits for the April 1, 2015 through December 31, 2015 period.

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] ES Spec.

Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. BCP is a Wisconsin variant of Medical Assistance for persons who are not elderly or disabled. The petitioner's BCP case opened effective January 6, 2015. His eligibility was calculated on the basis of *zero* reported gross monthly household income. His eligibility notice advised him to report income changes within the first 10 days of the next month if his gross income exceeded \$972.50. *See*, Exhibit 1, Notice dated January 12, 2015, p.3.
3. The petitioner subsequently began employment with [REDACTED]. His earnings exceeded the \$972.50 monthly limit in February, which meant that he should have reported the income in March to affect April 2015 eligibility. He never reported the income from that job, which ended in August 2015. The petitioner then began another job with [REDACTED], and received \$1,900 in gross wages in September. He continued to have earnings above \$972.50 from October through December, 2015. The petitioner reported none of these earnings to the Department or county agency.
4. The agency received a suspicious SWICA computer wage cross-match report on July 31, 2015, related to the first job. It showed that an employer was reporting earnings paid to the petitioner. The agency requested follow-up verification with the employer. After receiving verification, the agency concluded that the petitioner's income exceeded the BCP income limit and had been overpaid from April through August. During his September 2015 case review, the petitioner reported that he expected to receive Unemployment Compensation. The agency later learned of the second job and the excess earnings from September through December.
5. When the Department recalculated BCP eligibility for April through August 2016, it determined that the petitioner had been overpaid \$2,421.73 for the period (claim # [REDACTED]), and an overpayment notice was issued. A *Wisconsin Medicaid & BadgerCare Plus Overpayment Notice* and worksheet were also issued to the petitioner on February 12, 2016. This *Notice* advised that the petitioner was overpaid \$1,763.05 for the September 2 through December 31, 2015 period (claim # [REDACTED]) due to the recipient's second reporting error.
6. The BCP program placed the petitioner into an HMO. Every month, the BCP program paid the HMO a monthly capitation fee for the petitioner (\$436.86 monthly during the second overpayment period). *See*, Exhibit 4. The capitation fee was multiplied by the months of ineligibility to arrive at the overpayment total. In addition, the petitioner incurred a separate charge of \$15.61 for a BCP service used in the second period.

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. ...

(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.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a "no eligibility" case, to base the overpayment determination on the actual MA/BCP charges paid (see 2nd paragraph below):

28.4.2 Overpayment Amount

Use the actual income that was reported or required to be reported in determining if an overpayment has occurred.

If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. ...

BCPEH, § 28.4.2.

At hearing, the petitioner did not deny the wages attributed to him by the agency for the specific months in the overpayment period. He explained that he did not understand that he needed to report the increases *to the Department or county agency* when they occurred. However, the eligibility notice issued to him on January 12 clearly states the reporting requirement.

The petitioner stated that he went to the hospital for a toothache on approximately January 26, 2015. While there, he spoke to a hospital social worker, [REDACTED] [REDACTED], about BCP eligibility. The petitioner further testified that (1) he contacted Ms. [REDACTED] around February 10, to tell her that he was employed and had income, and (2) that she advised him to keep the BCP in force. In his mind, this excused him from responsibility for following the reporting instructions from the Department. Those instructions direct the recipient to report to the Department. The Department is not responsible for any incorrect advice or inaction by a person who is not employed by the Department or county agency. Further, the petitioner did *not* present testimony or an affidavit from Ms. [REDACTED] to confirm that he made such a contact in February 2015. The upshot is that the petitioner failed to report his income to the Department, which created the overpayment. The Department's decision to collect on that overpayment is sustained.

CONCLUSIONS OF LAW

1. The Department correctly determined that the petitioner was overpaid BCP benefits of \$4,184.78 (\$2,421.73 + \$1,763.05) from April 2015 through December 2015. It may proceed with recovery efforts.

THEREFORE, it is

ORDERED

That 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 9th day of May, 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 May 9, 2016.

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