



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/173592

PRELIMINARY RECITALS

Pursuant to a petition filed April 7, 2016, under Wis. Stat., §49.45(5), to review a decision by the Western Wisconsin Consortium to recover Medical Assistance (MA), a hearing was held on May 19, 2016, at Sparta, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether petitioner is liable for an MA overpayment.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
La Crosse County Dept. of Human Services
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Monroe County.
2. In 2014 petitioner received BadgerCare Plus (BC+) MA for herself and three children. Petitioner is separated from her husband but they continue to file tax returns as married. Under current BC+ rules petitioner's husband's income is counted in determining eligibility.
3. Petitioner had an eligibility review in October, 2014. She reported that the only income was \$500 monthly from relatives. By a notice dated October 20, 2014, the economic assistance consortium informed petitioner that she and the children were eligible for BC+. The notice mentioned

petitioner's husband but stated that he was not receiving BC+ because "[t]he person who filled out the application said that you do not want this benefit." The notice further stated that petitioner must report to the agency if "your household's" total monthly income goes over \$2,325.83.

4. Petitioner's husband was working in October, 2014, and his monthly income on its own was over \$2,325.83. It remained over the limit through August, 2015. Effective September 1, 2015 petitioner's husband's income was counted and BC+ was changed appropriately.
5. The agency determined that all MA issued on petitioner's behalf from November, 2014 through August, 2015 was overpaid. MA for the children was unaffected. By a notice dated March 21, 2016 the agency informed petitioner that she was overpaid \$1,968.87 in MA during that period, claim no. 6900606794.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(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.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

Prior to April 1, 2014, the income limit for BC+ was 200% of the FPL. State law changed effective April 1, 2014 following the passage of 2013 Wisconsin Act 20. As of that date the limit for caretaker parents was reduced to 100% of the FPL, which, for a five-person household was \$2,325.83 in 2014. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the BC+ Handbook, Appendix 50.1 for the limit. The new law also changed how income is budgeted. Now income is budgeted based upon tax relationships as well as family relationships, and income is based upon taxable income under Modified Adjusted Gross Income (MAGI) rules. Handbook, App. 2.8.2, definition of "MAGI." The changes occurred as of April 1, 2014 for new applicants, and when current recipients completed reviews.

Under the new MAGI rules, parents' financial eligibility is determined along with their spouses and any children who are claimed as dependents on the parents' tax returns. If a married couple is living apart but filing taxes jointly, they are included together in the BC+ group. BC Handbook, App. 2.3.1.1.

Petitioner did not dispute the amount of her husband's income or how the overpayment amount was determined. She testified that she was unaware of the need to report her husband's income. The agency provided a copy of the client assistance manual that explained, on page 14, the tax filing rules. In addition, a review of the case note from October 7, 2014 shows that the worker asked petitioner how she and her husband would be filing taxes, and when she replied jointly, the worker noted that she had to add petitioner's husband to the group.

It is possible that petitioner did not understand the importance of her husband's status, and thus she did not report that he was working. The MA overpayment rule does not require the failure to be intentional; it can just as easily be an honest mistake. It looks like petitioner made such an honest mistake in failing to report her husband's employment, but the result was that petitioner received MA benefits for which she was ineligible. Under state MA rules the agency must seek recovery of those benefits.

CONCLUSIONS OF LAW

The agency correctly determined an MA overpayment resulting from petitioner failing to report her husband's income that was required to be reported because they file tax returns jointly.

THEREFORE, it is

ORDERED

That the petition for review 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 27th day of May, 2016

\sBrian C. Schneider
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 27, 2016.

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