



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MOP - 175016

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 14, 2016, under Wis. Stat., §49.45(5), to review a decision by the Rock County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on July 27, 2016, by telephone.

The issue for determination is whether the county correctly determined that petitioner was overpaid MA.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

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

By: [REDACTED]  
Rock County Dept. of Social Services  
P.O. Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner received BadgerCare Plus (BC+) MA in 2014 and 2015. When he enrolled effective November 1, 2014, he was informed by a notice dated October 24, 2014 that he needed to report to the county agency if his monthly income rose above \$972.50.

3. Petitioner's income, a combination of earned income from [REDACTED] and a \$91.36 monthly pension, went above \$972.50 in January, 2015 and stayed above that level until BC+ closed November 1, 2015 after the county reviewed his case. Petitioner did not report the increase.
4. By a notice dated May 20, 2016 the county informed petitioner that he was overpaid \$3,491.78 in MA from March 1 through October 31, 2015 because he failed to report increased income, claim no. [REDACTED]. The overpayment consisted of monthly HMO capitation fees paid by the MA program during those months.

### 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 state had an MA program for childless adults called the BC+ Core program with an income limit of 200% of the Federal Poverty Level (FPL). The program was limited to only a small number of potentially eligible participants due to enrollment limits. State law changed effective April 1, 2014. As of that date all childless adults became eligible for BC+ but with the income limit reduced to 100% of the FPL, which, for a one-person household, was \$972.50 in 2014 and 2015. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the BC+ Handbook, Appendix 50.1 for the limit.

Under the new policy a BC+ recipient must report to the agency if income in a month exceeds the limit. The report must be made by the tenth of the next month after the income rises above the limit. BC+ Handbook, App. 27.3. The change then occurs in the next possible month.

When petitioner enrolled effective November 1, 2014 his monthly income was below \$972.50. In January, 2015 his income rose above that amount, and thus he should have reported the increase by February 10. His

BC+ would have closed March 1, 2015. Had the January increase been a one-month circumstance, the BC+ would not have been affected, but petitioner's income stayed above \$972.50 continuously in the months after January. The county thus correctly determined that HMO capitation payments paid on petitioner's behalf beginning March 1, 2015 were overpayments.

Petitioner argued that the employer gave him too many hours and should be responsible for the overpayment. The rules require the BC+ recipient to report higher income; the program has no authority over the employer. Because petitioner was responsible for reporting the increased income and he failed to do so, the county correctly determined that he was overpaid.

### **CONCLUSIONS OF LAW**

The county correctly determined that petitioner was overpaid BC+ totaling \$3,491.78 because he failed to report an increase in income that put him over the BC+ income limit.

**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, **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 29th day of July, 2016

\s \_\_\_\_\_  
Brian 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 July 29, 2016.

Rock Cty. Dept. of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability