



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 175200

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2016, under Wis. Stat., §49.45(5), to review a decision by Brown County Human Services to recover Medical Assistance (MA), a hearing was held on August 10, 2016, by telephone.

The issue for determination is whether the county correctly determined an MA overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. On April 24, 2015 the county agency informed petitioner that she and one child were eligible for BadgerCare Plus (BC+) MA effective May 1, 2016, with no premium (petitioner has a second child who receives MA automatically as a Supplemental Security Income (SSI) recipient), based upon budgeted monthly income of approximately \$1,500. The notice informed petitioner that if

her income exceeded \$1,674.17 in a month she would need to report the increased income to the county by the tenth of the next month. See Exhibit 4.

3. Petitioner's earned income rose above that amount in May, 2015, when her two paychecks totaled \$3,018. Petitioner did not report the increase. Income stayed above the \$1,674.17 level thereafter.
4. The county discovered the increased income in November, 2015. It determined that petitioner would have been ineligible for MA beginning July 1, 2015 through November 30, 2015. Her children's MA would not have been affected.
5. By a notice dated May 18, 2016, the county informed petitioner that she was overpaid \$1,158.86 in MA from July 1 through November 30, 2015, due to client error, claim no. [REDACTED]. Exhibit 2. The overpaid amounts consisted of either BC+ premiums that petitioner would have been liable to pay, or actual MA payments (in the form of HMO capitation fees) paid on petitioner's behalf in those months, whichever was lower in each month. See Exhibit 1, page 8 of 16.

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.

The Handbook, App. 28.4.2 provides that if an overpayment is caused by a failure to report increased income, and the household would have remained eligible for BC+ but with increased premiums, the overpayment is the difference between the premiums originally paid and the correct premiums based on the actual income. However, the overpaid premium cannot exceed the amount of BC+ benefits actually provided in the given month. Thus the overpayment for a given month is the unpaid premium or the MA benefits paid out, whichever is lower.

As of April 1, 2014, the BC+ income limit for caretaker parents was 100% of the Federal Poverty Level (FPL), which, for a three-person household in 2015 was \$1,674.17. See Wis. Stat., §49.471(4)(a)4.b for the law, and the BC+ Handbook, Appendix 50.1 for the limit. Petitioner's counted monthly income (which did not include her son's SSI) was over that limit every month beginning with May, 2015.

I conclude that the county correctly determined the BC+ overpayment. Petitioner testified that she did not know she had to report the increased income, but that is precisely what a client error overpayment entails. If petitioner knew she had to report but did not it would be considered fraud. It cannot be considered agency error because the agency informed petitioner of the need to report increased income.

Petitioner also complained that it took so long to issue the overpayment notice. The rules do not put a time limit on the agency's issuance of overpayment notices. The six months from discovery to overpayment notice actually was relatively fast, in my experience, because county agencies have a backlog in reviewing overpayment claims.

CONCLUSIONS OF LAW

The county correctly determined a BC+ overpayment issued to petitioner.

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 15th day of August, 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 August 15, 2016.

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