



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MOP - 175263

PRELIMINARY RECITALS

Pursuant to a petition filed on June 29, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Dept. of Social Services regarding an overpayment of Medical Assistance (MA) – BadgerCare benefits, a hearing was held on August 9, 2016, by telephone.

The issue for determination is whether the county agency has correctly determined that the petitioner was overpaid \$816.90 in BadgerCare due to fraud.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted] ES Supervisor
Rock County Dept. of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Rock County. She was receiving MA-BadgerCare in at least the periods of May & June, 2015. See, Exhibit #1, at pp. 9-10.

2. In January, 2015, verification was provided by the petitioner's employer indicating that she was working about 24 hours per week, at \$10 per hour, i.e., \$960 per month gross income. The petitioner had no other source of income. See, Exhibit #1, at p. 5.
3. The petitioner's employer provided additional work hours to her in May and June, 2015, causing her to actually earn \$1,635 in May, 2016, and \$1,695.75 in June, 2015, as gross income in each month. See, Exhibit #1, at pp. 11.
4. The petitioner attempted to file a report with the agency about her increased earnings, but failed. There is no information in her file's Case Comments that indicate she contacted the agency about her income in these two months. See, Exhibit #1, at pp. 19-20.
5. In October, 2015, the agency received an "alert" from the State Wage Record data crossmatch at the Department of Workforce Development indicating that the petitioner earned substantially more in the 2nd Quarter of 2015 than the agency had been budgeting for FS purposes.
6. On December 17, 2015, the petitioner's employer was re-contacted and the petitioner's actual income in March – August, 2015, was reported by the employer, indicating that her actual income was \$1,635 in May 2015 and \$1,695 in June, 2015. See Exhibit #1, at p.11.
7. On June 9, 2016, the county agency issued a Wisconsin Medicaid And BadgerCare Plus Overpayment Notice to the petitioner informing her that the agency had determined that she had been overpaid \$816.90 of MA BadgerCare in May and June, 2016, due to an unspecified act of fraud. See, Exhibit #1, at pp. 7-8.
8. On June 10, 2016, the county agency issued a second and similar Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice to the petitioner informing her that the agency had determined that she had been overpaid \$816.90 of MA BadgerCare in May and June, 2016, due to her failure to report household income exceeding program limits due to a client error. See, Exhibit #1, at pp. 13-14.
9. The Department paid on the petitioner's behalf in May and June, 2016, the capitation rate of \$408.45 in each month, to make her eligible for BadgerCare; in both of these months, her net countable income exceeded the one person household income limit of \$980.93. See, Exhibit #1, at p.7; and see, Exhibit #1, at pp. 13-14.
10. The petitioner did not intend to defraud the BadgerCare Program. The overpayment here was caused by a client reporting error due to an unexpected income spike.

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:...

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.

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.

As of February 1, 2015 all childless adults became eligible for BC+ but with an income limit of 100% of the Federal Poverty Level, which, for a one-person household, is \$980.83. See Wis. Stat., §49.471(4)(a)4, and the MA Handbook, Appendix 50.1 (effective 2/1/15) for the then-current income limit. Thus when petitioner’s income rose above that amount, she lost BC+ eligibility.

Although I am sympathetic to petitioner’s situation, I must uphold the overpayment.

The failure to report changes does not have to be intentional or fraudulent. Because petitioner did not follow up on her BC+ eligibility, she mistakenly did not know that she needed to report the increases in income in May & June or an overpayment could result. The result, however, mistaken, was that the state MA program paid almost \$816.80 in BC+ capitation rates petitioner’s behalf for which petitioner was ineligible. Under the clear language of the statute, the agency is obligated to seek recovery of those payments.

CONCLUSIONS OF LAW

That the county agency correctly determined that the petitioner was overpaid \$816.90 in May & June, 2016, due to “client error”, and incorrectly determined that she did so due to “fraud”. The overpayment is sustained but the reason code is to be entered solely as due to client error and reference to fraud is to be removed.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to remove all recorded notation of client fraud in relation to Medical Assistance Overpayment Claim No. 1900470231, and instead reflect as a matter of record that the Claim arises solely from client error only. This action shall be completed within 10 days of the date of this decision. **IT IS FURTHER ORDERED**, that in all other respects the agency determination is affirmed and the instant appeal 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, **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 11th day of August, 2016

\s _____
Kenneth D. Duren
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 11, 2016.

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