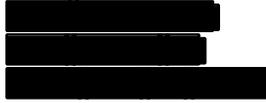




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MOP - 175354

PRELIMINARY RECITALS

Pursuant to a petition filed on July 1, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services regarding Medical Assistance (MA), a hearing was held on September 26, 2016, by telephone.

The issue for determination is whether the agency is entitled to seek recovery of overpayments of Medical Assistance/BadgerCare paid to petitioner going back to February 2008.

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]
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner shares joint custody of his daughter [REDACTED] with his ex-wife. According to petitioner's unrefuted testimony, the court ordered placement agreement designates that the petitioner and his ex-wife should each have 50-50 placement.
3. Petitioner included his daughter [REDACTED] as part of his household in his application for Medical Assistance/BadgerCare going back to February 2008.
4. In 2013, the agency hired the Brown County Sheriff's Department to conduct an investigation into the petitioner's household.
5. As a result of the Sheriff Department's investigation, it was determined in January 2014 that [REDACTED] resided more with her mother than with the petitioner going back to 2008.
6. On May 25, 2016, the agency provided the petitioner with seven Notices of Overpayment of Medical Assistance/BadgerCare benefits for the time period February 1, 2008 through January 31, 2014 in the total amount of \$5,087.98.

DISCUSSION

Medical Assistance 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 BadgerCare Plus Eligibility Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

In the instant case, the county agency determined that the petitioner had been overpaid Medical Assistance/BadgerCare because his daughter resided more time with her mother than the petitioner. The agency relied on the following policy directive:

2.2.1.2 Joint Placement

When the natural or adoptive parents of a child do not live together, and have joint placement arrangements for the child (through a mutually agreed upon arrangement or court order), only one parent can be determined eligible at a time unless there is reasonably equivalent placement. Reasonably equivalent placement means that the child is residing with each parent at least 40% of the time during a month.

If the child is not residing with both parents at least 40% of the time, only the parent with the greater percentage of the placement time may apply on behalf of the child and/or for him or herself as the caretaker relative of that child.

If only one parent of a child is applying for BC+ and he or she is stating that they have placement of the child for at least 40% of the time, accept the declaration unless it is questionable.

If both parents are applying for BC+ and claim the child is residing with them, act on their BC+ cases as follows:

1. If both parents agree that they have a reasonably equivalent placement arrangement, ask under which parent's case they want the child to be receiving BC+ benefits and determine eligibility for both parents' cases.
2. If either parent disputes that the placement arrangement is reasonably equivalent, the eligibility worker must determine the monthly percentage of the physical placement based on the court order. If the court order does not show reasonably equivalent placement, consider the child to be with the parent s/he is residing with during the month in question and deny the other parent's eligibility as a caretaker relative of this child.
3. If the parents cannot agree on which case the child will receive benefits, put the child on the case with the family whose income is at the lower FPL level.
4. Document your decision in the case record.

In determining eligibility for the parents with equivalent placement, the child is considered to be residing in both of their homes. That means the child will be included in the group size for both cases and the child's income will also be counted in both cases.

If reasonably equivalent placement exists (as described above) and both parents apply for BadgerCare Plus for the child and the child has access to health insurance where an employer pays 80% or more of the monthly premium in one home but not the other, the child shall remain eligible for BadgerCare Plus on the case with the parent who does not have access to health insurance for which the employer pays 80% or more.

BadgerCare Plus Eligibility Handbook, 2.2.1.2.

The evidence in the record does not establish by a preponderance of the evidence what percentage of placement time that the petitioner's daughter actually resided with him versus his ex-wife from February 2008 through January 2014. The petitioner's unrefuted testimony is that the court approved placement agreement between him and his ex-wife awarded them both 50-50 custody of their daughter [REDACTED]. Although the petitioner acknowledges that his daughter [REDACTED] spent more time with her mother during the school year, he testified that she also spent time with him, including increased time over the summer. The evidence did establish that the petitioner does have some minority amount of physical placement.

The 40% placement test for "reasonably equivalent placement" does not even come in to play if the other parent is not applying for or receiving BadgerCare benefits. It is only triggered when both parents seek Medical Assistance/BadgerCare. When only one parent of a minor has applied for medical assistance and has a joint custody and placement arrangement that provides for some residence of the child with the applicant parent, then that parent may be eligible for benefits regardless of the placement percentage. There was no evidence presented that the petitioner's ex-wife had sought eligibility for Medical Assistance/BadgerCare on behalf of their daughter, [REDACTED].

Furthermore, the state statute regarding BadgerCare does not require a specific percentage of placement time as a nonfinancial condition of eligibility. Rather, the statute merely defines a parent to include a biological parent, without regard to amount of placement time. Wis. Stats. §49.471(1)(i), cross-referencing §49.141(1)(j). The "general eligibility" subdivision of the statute says that eligible

individuals include a parent of a child who is living in the home with the parent, and that family income cannot exceed 200% of the federal poverty level. Wis. Stat. §49.471(4)(a)3&4. It is unrefuted that the petitioner is the parent of his daughter [REDACTED] and that he had some placement time with her. Accordingly, the county agency failed to demonstrate by a preponderance of the evidence that the petitioner was ineligible to receive Medical Assistance/BadgerCare benefits on behalf of his daughter, [REDACTED], going back to February 2008.

CONCLUSIONS OF LAW

Petitioner was not overpaid Medical Assistance/BadgerCare benefits as a result of including his daughter [REDACTED] in his household from February 1, 2008 through January 31, 2014.

THEREFORE, it is ORDERED

That the petition herein be remanded to the county agency with instructions to cease efforts to seek recovery of any overpayment of Medical Assistance/BadgerCare benefits from the petitioner paid on behalf of his daughter [REDACTED] from February 1, 2008 through January 31, 2014.

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 3rd day of October, 2016

\s _____
Kristin P. Fredrick
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 October 3, 2016.

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