



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MOP - 175405

PRELIMINARY RECITALS

Pursuant to a petition filed on July 6, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Door County Department of Social Services regarding Medical Assistance (MA), a hearing was held on November 8, 2016, by telephone.

The issue for determination is whether the agency correctly determined that petitioner is liable for an MA overpayment in the total amount of \$15,117.11 in claims numbered: [redacted], [redacted], [redacted], and [redacted].

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]
Door County Department of Social Services
Door County Government Center
421 Nebraska Street
Sturgeon Bay, WI 54235-0670

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Door County.

2. Petitioner was a recipient in BC+ medical assistance benefits as a single adult.
3. Petitioner was sent notices from the agency informing her of her obligation to report if her income exceeded the income limit for the program. These notices were sent to petitioner on 3/4/14, 3/13/15, 8/7/15, and 3/4/16.
4. In all the months of the overpayment periods the petitioner's income exceeded the reporting requirement. Petitioner did not report to the agency that her income was exceeding the income limit on a regular basis, often by many hundreds of dollars per month.
5. On 6/8/16 the agency sent overpayment notices to petitioner for overpayment claims in the total amount of \$15,117.11 in claims numbered: [REDACTED] ((\$9,073.51 for the period from 9/1/14 to 8/31/15), [REDACTED] (\$1,698.86 for the period from 9/1/15 to 9/30/15), [REDACTED] (\$1,318.91 for the period from 12/1/15 to 12/31/15), and [REDACTED] (\$3,025.83 for the period from 2/1/16 to 5/31/16).
6. Petitioner appealed.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program's nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. Wis. Stat. § 49.45(23); 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 2.1.

The petitioner must pass an income test. The income limit for adults went lower effective April 1, 2014: an eligible adult cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount is varied from \$972.50 to \$990 monthly for a household of one during the years of the claim. *Id.*, § 50.1.

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+ Eligibility Handbook* at § 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

In its numerous notices to petitioner over the years of her receiving MA benefits, the Department notified petitioner that she was required to report if her income exceeded the eligibility threshold of between \$972.50 to \$990 (threshold amount increased yearly during period of claim of overpayment, *see BC+ Eligibility Handbook* at § 50.1, releases 13-02, 14-01, and 15-01). The numerous notices directed her to notify the agency before the tenth day of the month following the month with excess income. Petitioner never notified the agency of this income exceeding the threshold despite her being over the limit in every month of the overpayment claim due to her gross wages from [REDACTED]. In some of the months, petitioner's gross income was more than double the threshold amount.

I was unable to find any error with the agency's calculations and petitioner did not identify any. Petitioner's argument was that she had a lot of social workers and communication was confusing. She stated that she told her boss that she could not work so many hours that would result in her income being too high to receive benefits. But, she explained, her employer repeatedly scheduled her for hours that she felt obligated to work. She wished that her employer would have scheduled her for fewer hours so she could have earned less money. Petitioner also stated that she never received any notices that indicated a reporting requirement. These arguments are meritless. The record includes copies of numerous notices sent to petitioner over years that indicate her reporting requirement. I find it far more believable that petitioner either did not read the entire notice or ignored the reporting requirement. Petitioner did not argue that the income attributed to her was incorrect or that she was not earning income that exceeded the income eligibility limit. Petitioner stated that she was told by a worker that she would maintain eligibility if she worked "a few extra hours" one month. But, petitioner's gross income was not even close to the eligibility limit in many of the months and this was not just one or two month of overage. Petitioner was over the limit in every month from September 2014 to September 2015 and then in December 2015 and then from February 2016 to May 2016. This was not a persuasive argument.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner is liable for an MA overpayment in the total amount of \$15,117.11 in the above stated claims.

THEREFORE, it is

ORDERED

That this 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 10th day of November, 2016

\s _____
John P. Tedesco
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 November 10, 2016.

Door County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability