



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MOP - 175559

PRELIMINARY RECITALS

Pursuant to a petition filed on July 13, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit regarding Medical Assistance (MA), a hearing was held on September 27, 2016, by telephone.

The issue for determination is whether the Department established that petitioner is liable for a \$3,698.22 medical assistance overpayment.

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: 
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) was previously a resident of WI and now lives in MN.
2. Petitioner and his wife were enrolled in Wisconsin BadgerCare along with 3 children.

3. They moved to MN in October 2015.
4. The family applied for MA in Minnesota on October 15, 2015.
5. The family did not report to the local agency that they had moved to MN.
6. MA continued for the couple despite their residence out of state. WI finally terminated MA in WI as of May 31, 2016.
7. On 6/29/16, the agency issued a notice to petitioner of an MA overpayment in the amount of \$1,948.28 for the parents for the period from 12/1/15 to 5/31/16.
8. On 6/29/16, the agency issued a notice to petitioner of an MA overpayment in the amount of \$1,749.94 for the children's coverage for the period from 12/1/15 to 5/31/16.
9. Petitioner appealed.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

49.497 Recovery of incorrect medical assistance payments. (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.

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted.

Wis. Stat. §49.497(1). (Note: Italicized for emphasis.) BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook* (BCPEH), §28.1, online at <http://www.emhandbooks.wi.gov/bcplus/>.

Department policy then instructs the agency, in a "no eligibility" case, to base the overpayment determination on the actual MA/BCP charges paid.

28.1 OVERPAYMENTS.

An "overpayment" occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. Concealing or not reporting income.
2. Failure to report a change in income.
3. Providing misinformation at the time of application regarding any information that would affect eligibility.

28.2 RECOVERABLE OVERPAYMENTS.

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

1. Applicant /Member Error

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

Applicant/Member error occurs when there is a:

- a. Misstatement or omission of facts by a member, or any other person responsible for giving information on the member's behalf at a BC + application or review.
- or
- b. Failure on the part of the member, or any person responsible for giving information on the member's behalf, to report required changes in financial (27.3) (income, expenses, etc.) or non-financial (27.2) information that affects eligibility, premium, patient liability or cost share amounts.

An overpayment occurs if the change would have adversely affected eligibility, the benefit plan or the premium amount.

BCPEH, §28.1 – 28.2.

In this case, the agency asserts that the petitioner failed to report that the family had moved out of Wisconsin. Residence outside of Wisconsin would have resulted in total ineligibility for Wisconsin MA so all sums paid, primarily monthly capitation payments paid by the state to keep the family insured, are included in the overpayment claims.

The petitioner did not argue that the calculations are incorrect or that the factual basis of the overpayment claim, the move to Minnesota, was incorrect. Petitioner instead argued that petitioner believed that the state of Minnesota would notify Wisconsin to cancel both the Wisconsin FoodShare and MA benefits. Petitioner stated that the Minnesota representative informed petitioner that Minnesota would contact Wisconsin and cancel WI benefits. But, the obligation to report changes is a responsibility of the recipient of benefits. Wisconsin would not have continued paying to keep the family enrolled if it had known that the family had relocated to MN.

The record was held open for 10 days for petitioner to submit documentation that petitioner purported would establish that the state of Minnesota benefits representative did, in fact, notify Wisconsin of the

relocation. But, the document submitted only states that MN “verified with Wisconsin” that “all [household] members open in Wisconsin on SNAP, ending 10/31/15.” The document states nothing about medical assistance. Furthermore, the DHS representative explained at the hearing that the FS was closing for the family for a separate reason and not because of a report of relocation. While unfortunate, the fault of the continuing benefits and overpayment falls on petitioner. All it would have taken was a one or two-sentence letter to the agency to inform them of the out-of-state move. A phone call could have sufficed and the number to call appeared on numerous notices to the family. Petitioner was in error to rely on a Minnesota state worker to manage the Wisconsin benefits that he knew he was receiving.

CONCLUSIONS OF LAW

The agency correctly determined the MA overpayments totaling 3,698.22 for the period from 12/1/15 to 5/31/16.

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 20th day of October, 2016

\s _____
John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 20, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability