



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MOP - 175987

PRELIMINARY RECITALS

Pursuant to a petition filed on August 3, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on August 31, 2016, by telephone.

The issue for determination is whether the agency established that petitioner is liable for a MA overpayment in the amount of \$3,639.52.

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: 
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner applied for MA as a single adult in December 2014 and reported no income. He was enrolled in BC+.

3. Petitioner renewed his BC+ case in October 2015 and again reported no income.
4. Petitioner was required to report to the agency within 10th day of the following month if his income in a month exceeded \$972.50.
5. Petitioner became employed on 5/12/15 but did not report the new job to the agency. Petitioner's monthly income exceeded this amount from June 2015 through May 2016.
6. On 7/14/16 the agency issued a MA overpayment notice for the amount of \$3,639.52 for the period from 8/1/15 through 5/31/16.
7. 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, petitioner applied for MA in December 2014 and reported no income. He renewed his MA in October 2015 and again stated that he had no income. The agency asserts that the petitioner was required to report income exceeding \$972.50 per month. This was communicated to petitioner through formal notices in December 2014 and October 2015. Petitioner became employed and his income was over the reporting amount starting in June 2015.

Petitioner's father argued that petitioner was indeed over the income threshold and knew that. Petitioner's father stated that his son refused to work fewer hours to become eligible. Overall, nothing his father said was helpful for petitioner's case. Petitioner's father also argued that his son never saw a provider during the overpayment period. He was unaware that the program pays a monthly capitation payment which is essentially a premium payment on behalf of the enrollee. This is the basis of the overpayment and the agency is correct to claim this amount because petitioner should not have been enrolled during the months of the overpayment.

CONCLUSIONS OF LAW

The agency did not err in its determination of the overpayment.

THEREFORE, it is

ORDERED

That this matter 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

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

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability