



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MOP - 176205

PRELIMINARY RECITALS

Pursuant to a petition filed August 15, 2016, under Wis. Stat., §49.45(5), to review a decision by the Rock County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on September 20, 2016, by telephone.

The issue for determination is whether the county correctly determined an MA overpayment due to the failure to report increased income.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
Rock County Dept. of Social Services
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Rock County.
2. In 2015 petitioner received BadgerCare Plus (BC+) MA for herself and her son (the fiscal test group was three people, however). She had a review in late March, and the worker obtained her two most recent pay stubs. The gross income on the stubs totaled \$2,137.60.

3. By a notice dated April 17, 2015, the county informed petitioner that BC+ would continue with no premium. The notice also mentioned that petitioner should report to the agency if income in a month rose above \$2,226.65.
4. Petitioner's April income was \$2,499.20. Income was at least \$2,460 in every month thereafter. Petitioner did not report an increase.
5. The county discovered the increased income in late 2015. Adjustments were made effective December 1, 2015.
6. By a notice dated July 20, 2016 the county informed petitioner that she was overpaid MA in the amount of \$549.08, claim no. [REDACTED]. The overpayment was the total of premiums petitioner would have been required to pay based upon the higher income she actually received, except for one month where the HMO capitation fee was lower than the premium. In that month the capitation amount was used as the overpaid amount.

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:

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+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The Handbook, App. 28.4.2 provides that if an overpayment is caused by a failure to report increased income, and the household would have remained eligible for BC+ but with increased premiums, the overpayment is the difference between the premiums originally paid and the correct premiums based on the actual income. In this case no premiums were paid originally, so the overpayment is the full amount of the premiums that should have been paid.

Petitioner testified that she told the worker at the review that her income was increasing to \$32,000 per year, and thus it was the worker's error for using the two March pay stubs that reflected lower pay. However, workers are told to not base determinations on unverified future events, and the only verification available was the March pay stubs. Furthermore, the April 18 notice told petitioner that she needed to report income over \$2,226, so at very least petitioner should have been on notice that the agency might be under-budgeting her income.

I conclude that the overpayment claim is correct. It is not a penalty; it is simply the total of premiums that petitioner would have been required to pay if she had reported the higher income. It actually is less than what petitioner would have paid in premiums had the worker immediately implemented petitioner's \$32,000 annual salary. The premiums would have started in April instead of June, and they would have been higher because \$32,000 divided by 12 equals \$2,667 monthly, a higher amount than was budgeted in all but one month in the overpayment calculation.

CONCLUSIONS OF LAW

The county correctly determined a BC+ overpayment in the form of premiums owed by petitioner because she did not report her income rising above the mandatory reporting level.

THEREFORE, it is ORDERED

That the petition for review is hereby 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 26th day of September, 2016

\s _____
Brian C. Schneider
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 September 26, 2016.

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