



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 200346

PRELIMINARY RECITALS

Pursuant to a petition filed on October 29, 2020, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services (“the agency”) regarding Medical Assistance (MA), a hearing was held on December 15, 2020, by telephone. The hearing was first scheduled for November 18, 2020 but rescheduled due to a medical emergency at the request of Petitioner’s attorney.

The issue for determination is whether the agency correctly found that Petitioner was overpaid BadgerCare Plus benefits from July 2018 through December 2018 in the amount of \$3,931.30 due to client error.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County who received Badger Care Plus (BCP) as a one-person assistance group from November 2017 through at least December 2018.
2. Petitioner filed an application for a health care subsidy through the Federally Facilitated Marketplace. That application was forwarded to the agency on November 6, 2017 so that Petitioner could be screened for BCP eligibility.
3. At the time of application, Petitioner accurately reported that she had two part-time jobs: one with [REDACTED] and the other with [REDACTED]. She also reported and subsequently provided verification that she paid interest on a student loan.
4. The agency determined that Petitioner was eligible for BCP as of November 1, 2017 and sent her notice confirming her eligibility on November 30, 2017. The same notice advised Petitioner that she must report to the agency if her gross monthly household income increased to an amount in excess of \$1,005 by the 10th day of the month following the month of the increase.
5. On March 5, 2018, Petitioner contacted the agency and reported an increase in income from both of her employers. On March 16, 2018, the agency received an Employer Verification of Earnings (EVFE) form completed by [REDACTED] indicating that Petitioner worked 5 hours per week, that her hourly pay rate was \$2.75, and that she also received cash and/or tips averaging \$15 an hour (\$355 per month). On March 24, 2020, the agency received an EVFE form completed by [REDACTED] indicating that Petitioner worked 22 hours per week and earned \$9.23 per hour (\$812.24 per month).
6. On March 20, 2018, the agency determined that Petitioner was no longer eligible for BCP and sent her notice indicating that her BCP was closing.
7. On March 27, 2018, the agency determined that Petitioner remained eligible and on March 28, 2018 sent her a notice that she remained eligible. That notice also indicated she was required to report if her total monthly gross income went over \$1,011.67. The notice included no budget showing how it arrived at that determination.
8. On June 21, 2018, Petitioner contacted the agency to report that she had received a raise at [REDACTED] and subsequently submitted paystubs requested by the agency. She did not report a change in her income from [REDACTED].
9. On September 12, 2018, an agency worker noted that a SWICA Wage match discrepancy was created on July 27, 2018 but that the difference “was negligible.”
10. On September 28, 2018, Petitioner completed a BCP renewal, reported that her last day at [REDACTED] would be October 5, 2018 and that her hours had increased at [REDACTED]. The agency made a “reasonable compatibility” determination and kept Petitioner’s BCP open at that time.
11. On October 30, 2018, Petitioner reported to the agency that her income fluctuates depending on the time of year. She was reminded of her reporting obligation.
12. On November 27, 2018, Petitioner reported to the agency that her income had increased and that she anticipated that it would remain higher in December 2018 and then decrease in January 2019.
13. In April 2020, the agency sought and received monthly income verification from [REDACTED] and [REDACTED].

14. After reviewing the monthly income verification from [REDACTED] and [REDACTED], the agency determined that Petitioner's gross earnings exceeded the BCP income reporting threshold in May 2018 and that her gross earnings less student loan interest exceeded the BadgerCare Plus income eligibility limit from July 2018 through December 2018.
15. On September 1, 2020, the agency issued a *Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice* to Petitioner informing her that she received \$3,931.30 in BCP benefits to which she was not entitled due to client error for the time period July 1, 2018 through December 31, 2018. The overpayment amount was derived from a ForwardHealth report indicating that during the overpayment period the State of Wisconsin paid \$2,440.84 in Medicaid claims for Petitioner and \$1,490.46 in capitation payments to an HMO on Petitioner's behalf.

DISCUSSION

The recovery of overpaid BadgerCare Plus benefits is authorized by Wis. Stat., §49.497(1) as follows:

- (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 BadgerCare Plus Handbook (BCPH) §28.2. In other words, an overpayment is recoverable only if it is caused by the BCP recipient's error or omission. Overpayments caused by non-member errors, including errors made by the agency, are not recoverable. *Id.* at §28.3.

The BCP income eligibility limit for adults is 100% of the federal poverty level (FPL). See Wis. Stat. § 49.471(4)(a) and BCPH §§16.1 and 18.1. All taxable income plus Social Security is counted when determining BCP eligibility BCPH §16.1.2. BCP recipients must report increases in household income that *may* affect their program eligibility and must do so by the 10th of the month following the month in which the increase occurs. See *Id.* at §27.3. Effective February 1, 2017, the income eligibility limit for an assistance group of one was \$1,005 per month. That amount increased to \$1,011.67 effective February 1, 2018.

Here, the agency contended that Petitioner's gross income went over \$1,011.67 in May 2018, that she was required to report that increase by June 10, 2018, that she failed to do so, and that her failure caused her to receive BCP she was not eligible to receive from July through December 2018.

In a hearing concerning a BCP overpayment determination, the agency has the burden of proof. And, for the agency to prevail, a preponderance of the evidence in the record must demonstrate the propriety of the agency's recovery action. See Wis. Admin. Code §HA 3.09(4). More specifically, a preponderance of the evidence must show both that Petitioner failed to provide accurate or complete information, as detailed in Wis. Stat. §49.497(1)(a), and that Petitioner was not eligible for BCP during the alleged overpayment period. To meet this evidentiary standard, the evidence must demonstrate that the facts alleged by the agency are more likely than not to be true.

The agency's documentary evidence included CARES case comments; Petitioner's initial application; copies of notices of eligibility that included a statement of Petitioner's reporting obligations; documentation of Petitioner's monthly earnings received by the agency at various times; a worksheet demonstrating how the agency determined Petitioner's eligibility during the months included in the overpayment period; and a ForwardHealth report purporting to show Medicaid benefits paid on Petitioner's behalf.

The CARES case comments demonstrate that Petitioner accurately reported that she had two jobs when she first applied for assistance with health care, that she repeatedly contacted the agency to report increases in income, and that she provided requested verification to the agency. A case comment dated March 5, 2018 documents one of those several contacts. As testified by the agency representative, both of Petitioner's employers submitted EVFEs shortly thereafter. The agency's case comments (Exhibit 4) combined with the EVFEs (Exhibits 5 and 6) demonstrate that the agency was informed and had verification that Petitioner's gross income exceeded \$1,011.67 in March 2018. Yet, the "About Your Benefits" notice dated March 28, 2018, which was issued after Petitioner's contact and after the agency received those EVFEs, instructed her: "If your household's total monthly income (before taxes) goes over \$1,011.67, you must report it by the 10th day of the next month." (Exhibit 7). It is undisputed that Petitioner had already done just that mere weeks earlier. It is not reasonable to expect that Petitioner would interpret this instruction to mean that she should again notify the agency to report information she had just provided or that she should contact the agency every month that her gross income remained over \$1,011.67.

The agency representative explained that Petitioner's BCP case was kept open after Petitioner reported an income increase in March 2018 because she had student loan interest that was deducted from her gross income and that her income after that deduction was under the BCP taxable income limit. Deducting student loan interest from gross income is consistent with BadgerCare Plus policy. See BCPH §16.3. However, the agency did not provide a copy of documentation related to the student loan interest deduction so it is impossible to review whether the agency's eligibility determination in March 2018 was correct.

The agency's case notes indicate that in September 2018, Petitioner renewed her BCP and that the agency then determined that she was eligible based on "reasonable compatibility." (Exhibit 4: case note dated 9/28/2018). This is a reference to BCP policy that allows the agency to accept information provided by an individual regarding household income if that information is consistent with information available to the agency through electronic data sources. See *BadgerCare Plus Handbook* §9.12, et. seq. However, the record does not include a copy of the September 2018 application or any other documentation of the information provided by Petitioner regarding her household income nor does the record include documentation of the electronic data sources the agency reviewed to make a reasonable compatibility determination at that time. As a result, it is impossible to discern whether benefits were continued following Petitioner's September 2018 renewal due to agency error or due to Petitioner error.

For the reasons set forth above, I find that a preponderance of the evidence in the record does not establish that Petitioner was overpaid \$3,931.30 for the time period July 2018 through December 2018 due to client error.

CONCLUSIONS OF LAW

A preponderance of the evidence in the record does not establish that Petitioner was overpaid from July 2018 through December 2018 in the amount of \$3,931.30 due to client error; accordingly, she is not liable to repay that amount.

THEREFORE, it is

ORDERED

The matter is remanded to the agency to rescind the finding of overpayment claim # [REDACTED] and to cease all recovery efforts within ten days.

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, 4822 Madison Yards Way, 5th Floor North, 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.

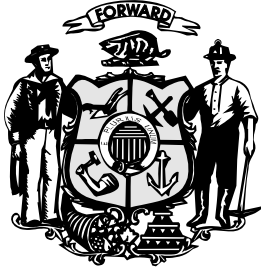
APPEAL TO COURT

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 February, 2021

\s _____
Teresa A. Perez
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 February 10, 2021.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability

