



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MAC - 207150

PRELIMINARY RECITALS

Pursuant to a petition filed on December 14, 2022, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Dane Cty. Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on January 24, 2023, by telephone.

The issue for determination is whether the respondent correctly issued petitioner an Order to Compel Payment of BCP liability in the amount of \$1,610.00.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Dane Cty. Dept. of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. On or about October 21, 2016, petitioner applied and was approved for BCP benefits. Exhibit 1.
3. On October 24, 2016, the agency sent petitioner an About Your Benefits notice to [REDACTED]. The notice informed petitioner that he was approved for BCP and that he would continue to receive that benefit until there was a change in his case. He was provided Reporting Rules, which required that he contact the agency within 10 days if he has a new address or has a change where he is staying. He was further required to report by the 10th day of the following month if his income before taxes exceeded \$990.00. Exhibit 1.
4. Thereafter, petitioner failed to report a change of address and income from employment.
5. Petitioner was employed with [REDACTED] from December, 2016 through September 2017. He had gross income from that employment as follows:
 - December 2016: \$2,320
 - January 2017: \$2,120.62
 - February 2017: \$2,262.00
 - March 2017: \$2,070.62
 - April 2017: \$1,515.99
 - May 2017: \$1,584.12
 - June 2017: \$2,549.75
 - July 2017: \$ 1,519.00
 - August 2017: \$1,329.12
 - September 2017: \$949.37

Exhibits 2 and 5.

6. Petitioner was further employed with [REDACTED] from March, 2017 through at least September, 2017. He had gross income from that employment as follows:
 - March 2017: \$748.93
 - April 2017: \$1,029.14
 - May 2017: \$995.03
 - June 2017: \$1,118.67
 - July 2017: \$701.33
 - August 2017: \$690.04
 - September 2017: \$740.53

Exhibits 3 and 5.

7. Petitioner's BCP benefits ended September 30, 2017.
8. The agency found that petitioner exceeded gross income for the BCP program in December, 2016, which needed to be reported to the agency by January 10, 2017. As he failed to do so, he incorrectly received BCP benefits from February, 2017 through September, 2017. The agency found an overpayment consisting of capitation payments made on his behalf in the amount of \$1,610.00, for February, 2017 through September, 2017. Exhibit 5 for the agency's overpayment calculations.
9. On March 13, 2019, the agency issued petitioner a notice of BCP Overpayment of \$1,610.00 for benefits received February 1, 2017 through September 30, 2017. The notice indicated he had 45 days to file an appeal. The notice was sent to the same address as set forth in Finding of Fact 3. Exhibit 4a.
10. The PACU sent dunning notices to petitioner on June 4, 2019 and July 2, 2019. The notices were sent to the address set forth in Finding of Fact 3. Exhibits 6a and b.

11. On December 3, 2022, the Public Assistance Collection Section (PACS) issued petitioner a Notice of Administrative Action, Order to Compel Liability for BCP debt in the amount of \$1,610.00. The notice was mailed to petitioner at [REDACTED] Exhibit 8.
12. On December 14, 2022, petitioner filed an appeal. Exhibit 9.

DISCUSSION

Petitioner took issue with the underlying BCP overpayment. He indicated that he did not receive the notice as he moved prior to it being issued. The notice was not sent to his then current address as he failed to update the agency of that move. As such, the overpayment notice was sent to the address he initially reported when submitting his BCP application. Even if the appeal of the overpayment was found to be timely, petitioner did not demonstrate any error in the agency's finding that an overpayment occurred or the amount thereof. The overpayment stemmed from the fact he failed to report income exceeded reportable income limits for a household of one. See BCP Handbook, 16.1 (Release 15-01), 27.3 (Release 17-01), 28.1 (Release 18-01), and 50.1 (Release 18-01). His failure to do so meant he continued to receive benefits when he was not otherwise entitled. *Id.* He pointed to no error in the agency's calculation of his income or the overpayment. His arguments against the finding of an overpayment were based largely on issues surrounding livable wages and lack of resources. Those arguments are based in equity. It is the longstanding policy of the DHA that its administrative law judges do not possess equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp 540, 545 (E.D. Wis.1977). See also, *Village of Silver Lake, Wis. v. DOR*, 87 Wis. 2d 463 (Wis. App. 1978). DHA must limit its decisions to the law as set forth in statutes and administrative code provisions. Based on the record, I find that the agency correctly found petitioner liable for the BCP overpayment of \$1,610.00.

Following issuance of a BadgerCare Plus overpayment notice, a person who then fails to enter into or adhere to a repayment agreement may be subject to an order to compel payment of that liability:

49.497(1m)(a) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment *or enter into, or comply with, an agreement for repayment*, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.

Wis. Stat. §49.497(1m)(a) (*emphasis added*).

The agency has the burden of proof in this matter. To prevail at an appeal regarding an Order to Compel Payment of Liability, the agency must typically offer at least the following: (1) evidence that it provided petitioner proper notice of the initial overpayment (e.g., Overpayment Notice), (2) evidence that it advised petitioner that s/he is liable to repay the overpayment and provided instructions for how to make payment or enter into a repayment agreement (e.g., Repayment Agreement), and (3) evidence showing that petitioner has not repaid the overpayment in full or complied with terms of a repayment plan.

Here, the record does not contain a copy of any Repayment Agreement that was issued to petitioner, apprising him of the ability to enter into a repayment plan and the process to do so. As such, I do not have the grounds necessary to conclude that the respondent met its statutory obligations in pursuit of the Order

to Compel. Therefore, I must remand this matter to the agency with instructions to rescind the Order to Compel Payment of Liability.

This decision found that petitioner is liable for the BCP overpayment. However, the record does not demonstrate that the agency correctly followed the steps to issue the Order to Compel Payment. I note to petitioner that this decision does not prohibit the agency from properly issuing an Order to Compel Payment of Liability in the future. If you wish to discuss your repayment options, you should contact Public Assistance Collection Section at 1-800-943-9499.

CONCLUSIONS OF LAW

The agency did not establish by a preponderance of the evidence in the record that it properly seeks to compel payment of the outstanding MA overpayment of \$1,610.00.

THEREFORE, it is ORDERED

That the matter is remanded to the agency to rescind the Notice of Administrative Action: Order to Compel Payment of Liability. The agency shall comply with this order within ten days of the date of this decision.

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

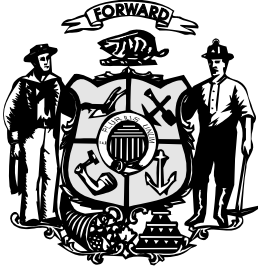
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 31st day of January, 2023



\s _____
Jason M. Grace
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 January 31, 2023.

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