



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

In the Matter of



DECISION
Case #: MOP - 190168

PRELIMINARY RECITALS

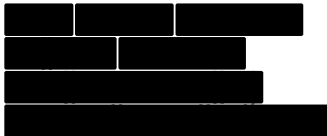
Pursuant to a petition filed on September 28, 2018, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services regarding Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on December 10, 2018, by telephone. The hearing was rescheduled once from November 15, 2018 at the petitioner’s request.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid MA/BCP benefits due to a failure to report assets exceeding the program eligibility limit.

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: 
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 92 year old resident of Sheboygan County and was a recipient of community waivers and MA healthcare benefits.
2. In June 2016 the petitioner's home was sold and her representative was advised that the proceeds from the sale would need to be spent down in order for the petitioner to qualify for MA.
3. On September 27, 2016 the agency emailed the petitioner an About Your Benefits notice confirming her eligibility for MA under the community waivers program with a monthly cost share. The notice further identified the asset limit for eligibility was \$2,000 and advising the petitioner that she was required to report any changes in assets within ten days.
4. The petitioner's bank account exceeded the \$2,000 asset limit in November 2016 and from February 2017 through October 31, 2017.
5. On August 15, 2018 the agency mailed the petitioner's power of attorney two Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notices advising that the petitioner had been overpaid MA/BCP benefits in the amount of \$2,587.35 from November 1, 2016 through November 30, 2016 (Claim # [REDACTED]) and in the amount of \$24,767.25 from February 1, 2017 to October 31, 2017 (Claim # [REDACTED]) due to a failure to report assets.
6. The amount of the MA/BCP overpayment to petitioner consisted of net capitation fees paid on petitioner's behalf during the time that she would have been ineligible for MA/BCP due to being over the asset limit.

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 or asset information, which in turn gives rise to a BCP overpayment:

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)(*emphasis added*); See also, *BCP Eligibility Handbook(BCP Handbook)*, §28.1.

Once it has been determined that payments were incorrectly paid to a recipient who was not eligible, Department policy instructs the agency to calculate the overpayment based upon on the actual MA/BCP charges or capitation fees paid on the recipient's behalf:

28.4.2 Overpayment Amount

Use the actual income that was reported or required to be reported in determining if an overpayment has occurred. The amount of recovery may not exceed the amount of the BadgerCare Plus benefits incorrectly provided.

If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount.

If the case is still eligible for BC+ for the time frame in question, but there was an increase in the premium, recover the difference between the premiums paid and the amount owed for each month in question. ...

BCP Handbook, § 28.4.2.

At hearing, the petitioner's representative testified that she felt that they had been misinformed about the eligibility requirements after the proceeds from the sale of the petitioner's home were spent down and turned over to the state. The petitioner's representative further testified that she misunderstood the requirement to keep assets below \$2,000.00. There is no dispute that the petitioner's assets exceeded \$2,000 during the overpayment period or that the assets were not reported to the agency until the following year renewal in 2017. The petitioner did not raise any dispute with the agency's calculations in determining the overpayment. I conclude that the agency has conclusively established by the preponderance of the evidence that the petitioner was overpaid MA/BCP and therefore, the agency is entitled to recover the amount of the overpayment.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was overpaid MA/BCP benefits from November 1, 2016 through November 30, 2016 and from February 1, 2017 to October 31, 2017 and therefore the agency may recover the overpayments.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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, 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.

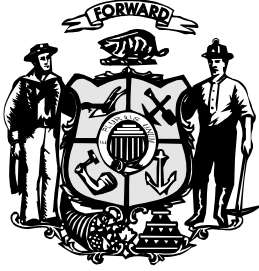
APPEAL TO COURT

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 11th day of January, 2019

\s _____
Kristin P. Fredrick
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 11, 2019.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability