FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION
Case #: MOP - 203391

PRELIMINARY RECITALS

Pursuant to a petition filed on October 8, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Human Services Department regarding Medical Assistance (MA), a hearing was held on December 14, 2021, by telephone. The hearing was first scheduled for November 10, 2021 but rescheduled, at Petitioner's request, to allow him additional time to seek legal representation.

The issue for determination is whether the agency properly found that Petitioner was overpaid $1,621.91 in BadgerCare Plus benefits for the time period August 2018 through October 2018 due to client error.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: [redacted]
Rock County Human Services
1900 Center Avenue
Janesville, WI 53546

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

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Rock County who had an open BadgerCare Plus (BCP) case from August 1, 2018 through October 31, 2018.
2. Petitioner was employed by [redacted], Inc. from August 7, 2017 through August 14, 2018. His final two pay dates were August 3, 2018 and August 17, 2018. He received $2,232.70 in total gross pay from [redacted] in August 2018. Some of those earnings were for work performed in July 2018. Exhibit R-2 and Petitioner's Testimony.
3. Petitioner filed an on-line ACCESS application for BadgerCare on August 27, 2018. The application included the following instruction in a field labeled "Current or Recent Job":

   > Please check the box for anyone who has a job right now or has had a job in the last three months. Don't check this box if the person is on strike from the job right now, if they are paid only with goods or services instead of money, or if they are self-employed. We'll ask about those next.

   Petitioner did not check the box in that field and thereby indicated both that he was not currently employed and that he had not been employed in the past three months (i.e., from May 27, 2018 through August 27, 2018, the date on which he filed the application). Exhibit R-2.
4. On August 31, 2018, the agency issued an "About Your Benefits" to Petitioner which indicated that Petitioner was eligible for BadgerCare Plus (BCP) benefits as of August 1, 2018 and that if his household's total monthly income increased to an amount in excess of $1,011.67, he must report that increase by the 10th day of the next month. Exhibit R-1.
5. Petitioner filed an initial claim for unemployment insurance in August 2018. He received $1,100 in gross unemployment insurance benefits during the month of September 2018. Exhibit R-2.
6. On September 10, 2018, Petitioner started a new job with [redacted]. He received gross wages from that employment in the amount of $625 in September 2018 and $3,517.78 in October 2018. Exhibit R-2.
7. On October 13, 2018, the agency learned that Petitioner was receiving unemployment insurance via an automatic update from a database that maintains information regarding state UI claims. Exhibit R-6.
8. On October 18, 2018, Petitioner notified the agency that he was no longer receiving unemployment insurance and that he had begun working for [redacted] in September. Based on the on-going earned income he reported at that time, the agency closed Petitioner's BadgerCare Plus effective November 1, 2018. Exhibit R-6.
9. For the time period August 2018 through October 2018, the Department of Health Services (the department) paid a total $244.78 in capitation payments on behalf of Petitioner ($0 in August 2018; $13.98 in September 2018; and $230.80 in October 2018.) For the same period, the department paid $1,377.13 in net Medicaid claims for Petitioner ($0 in August; $671.99 in September; and $705.14 in October).
10. By notice dated August 18, 2021 and August 19, 2021, the agency informed Petitioner that he had been overpaid $1,621.91in BCP benefits due to client error for the time period August 1, 2018 through October 31, 2018 and that he was liable to repay that amount.
11. Petitioner appealed.

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 who are not elderly, who do not have a disability, and who do not have minor, dependent children is 100% of the federal poverty level (FPL). See Wis. Stat. § 49.471(4)(a) and BCPH §§16.1 and 18.1. Effective February 1, 2018, the income eligibility limit for an assistance group of one was $1,011.67 per month. 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.

In a hearing concerning a BCP overpayment determination, the agency has the burden of proof. For the agency to prevail, a preponderance of the evidence in the record must demonstrate both that Petitioner failed to provide accurate or complete information, as detailed in Wis. Stat. §49.497(1)(a), and that the Petitioner was not eligible for BCP during the alleged overpayment period. See Wis. Admin. Code §HA 3.09(4).

Here, the agency contended that Petitioner provided inaccurate information on his application by failing to report that he had been employed within the three months prior to the date of his application, that petitioner was, in fact, employed until sometime in August 2018, and that he received total gross wages in August 2018 that exceeded 100% FPL. Moreover, the agency contended that Petitioner erred by not reporting that his gross income in September 2018 exceeded 100% FPL until October 18, 2018 and that as a result of the inaccuracy on the application and the failure to timely report his increase in September 2018 income, Petitioner was overpaid BCP from August through October 2018.

Petitioner does not dispute that he received the wages and unemployment insurance documented by the agency. Rather, he asserted that part of the wages he received in August 2018 were for work performed in July 2018 and that those wages should therefore not count when determining his eligibility in August 2018. That is not however the methodology used for calculating income eligibility for BadgerCare Plus.

And, the record clearly established that the gross wages that Petitioner received in August 2018 did exceed $1,011.67.

To establish that an individual is not eligible for BCP, the agency must show that both the individual's gross income and taxable (i.e., countable) income exceed 100% FPL. See BCPH § 16.1.2 Relevant policy instructions provide that the following pre-tax deductions must be subtracted to determine an individual's countable income:

1. Health Insurance premium payments, including pre-tax premium payments for medical, dental or vision plans
2. Health Savings Account (including flexible spending accounts) contributions
3. Retirement contributions
4. Parking & Transit costs
5. Child Care Savings Account contributions
6. Group Life Insurance premium payments

Id. at §16.3.2.

Other tax deductions are listed in *BadgerCare Plus Handbook* §16.3. They include but are not limited to: a capped amount of student loan interest; certain higher education expenses; self-employment tax deduction; court ordered spousal support, alimony, or maintenance; contributions to certain pension plans; penalties for early withdrawal of funds from certain bank accounts; performing artists tax-deductible expenses; and IRA contributions. There is no evidence in the record indicating that Petitioner had allowable deductions sufficient to reduce his countable monthly or annual income below the BCP income eligibility limit. See *DMS Operations Memo 17-35*, July 28, 2017.

The final issue is whether the agency correctly calculated the overpayment amount. Wis. Stat. §49.497(1)(b) provides, in relevant part, as follows: "The extent of recovery is limited to the amount of the benefits incorrectly granted." Department policy implements that statutory subsection as follows: "If the case was ineligible for BadgerCare Plus, recover the amount of fee-for-service claims paid by the state and any HMO capitation payments the state paid. Use ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s)." See BCPH §28.4.2. The agency here offered copies of the ForwardHealth reports that establish the accuracy of the overpayment amount.

Finally, I note that Petitioner and his father, who appeared with him at hearing, explained that Petitioner did not sign up for [redacted] health care coverage after his job with [redacted] ended because he had been advised that he would be eligible for BCP and that he incurred $42,000 in medical expenses as a result. I appreciate their frustration and understand the difficulty of these circumstances. However, as an administrative law judge, I am required to apply the relevant legal authorities and those legal authorities do not grant me the discretion to waive overpayments based on financial hardship or equitable grounds.

For the reasons set forth above, I find that the agency's evidence was sufficient to prove that Petitioner was overpaid BCP from due to client error.

CONCLUSIONS OF LAW

Petitioner was overpaid BadgerCare Plus benefits in the amount of $1,621.91 for the time period August 2018 through October 2018 and is liable to repay that amount

THEREFORE, it is **ORDERED**

That Petitioner's appeal 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.

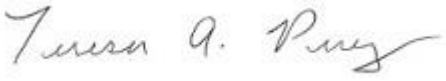
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

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 25th day of January, 2022



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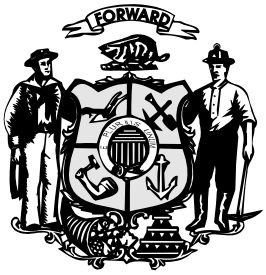
Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 25, 2022.

Rock Cty Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability