



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/168826

PRELIMINARY RECITALS

Pursuant to a petition filed September 21, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on October 08, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that Petitioner was overpaid child care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: LaReina Horton

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner was sent a manually generated overpayment notice dated September 3, 2015 that informed him that he had been overissued child care benefits in the amount of \$1078.29 for the period of June 29, 2014 to March 31, 2015. A computer generated notice dated September 4, 2015 was issued with the same information.
3. The reason for the overissuance alleged here is that Petitioner failed to accurately report household composition and income. More specifically, the reason for this alleged overpayment is that Petitioner and his girlfriend (SM) were living in the same home but then had a child together and, though SM reported the birth, the couple did not report that they were the parents to the agency. That child was born on [REDACTED], 2012.
4. SM was also sent the overpayment notices described at Finding # 2. She did not file an appeal with the Division of Hearings and Appeals. Intentional program violation notices were issued on September 9, 2015 to both Petitioner and SM. Neither appealed that action.
5. The overpayment here consists of an adjustment to the amount of childcare that would have been paid for by the government had household composition and income been properly reported. The copay for Petitioner and SM would have been higher and there was also a period in March 2015 where child care was used when a parent, SM, was not in an approved activity due to birth of a second child in common.

DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code*. *Wis. Admin. Code*, § DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment or whose error caused the overpayment. *Wis. Admin. Code*, § DCF 101.23(1)(g). All overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual)*, §2.3.1. [The Manual has been updated but the references in this Decision are to the manual in effect at the time of circumstances here.]

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Relevant policy relied upon by the agency as the basis for this alleged overpayment involved here includes the following provisions: changes affecting eligibility must be reported within 10 days (*Manual, §1.15.1*), an assistance group includes nonmarital coparents (*Manual, §1.2.9, definition of Assistance Group*), both parents in a 2 parent household to be in an approved activity (*Manual, §1.1.5*) and that copays are required and are based on family size and income (*Manual, §1.4.8.2*).

That child care benefits were issued as noted by the agency, that Petitioner and SM were living in the same household and that income was correctly determined by the agency were not disputed here; rather, Petitioner maintains that neither he nor SM knew that they had to report that they were a household when the child in common was born. Nonetheless, the child care rules are clear, biological parents and their children must be included in the same household. Here Petitioner and SM filed renewals and six month report forms during the time involved. SM did report the birth but neither Petitioner nor SM ever reported that the other parent was in the house. Petitioner never reported that he was the father of the newborn child in the house in his renewals or six month reports. This is not an agency error. I am sustaining the overpayment.

CONCLUSIONS OF LAW

That the evidence offered by the agency is sufficient to demonstrate that Petitioner was overpaid child care benefits as alleged.

THEREFORE, it is

ORDERED

That this 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, 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 Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **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 Milwaukee,
Wisconsin, this 15th day of January, 2016

\sDavid D. Fleming
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 15, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud