



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/169285

PRELIMINARY RECITALS

Pursuant to a petition filed October 08, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on November 24, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$2,438.07 in childcare benefits for the period from January 1, 2014 through June 30, 2015 because she failed to report that the children’s father was living in her home.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Kenosha County.

2. The petitioner received childcare assistance from January 1, 2014 through June 30, 2015. She received this childcare assistance as a single adult residing with her children. She reported that the children's father was not living in her home.
3. On September 21, 2015 the agency sent the petitioner the following childcare overpayment notices stating:
 - a. She was overpaid \$278.70 in childcare benefits from the period from January 1, 2014 to January 31, 2014 under claim number [REDACTED]
 - b. She was overpaid \$1,419.31 in childcare benefits from June 1, 2014 to December 31, 2014 under claim number [REDACTED]
 - c. She was overpaid \$740.06 in childcare benefits from January 1, 2015 to June 30, 2015 under claim number [REDACTED]
4. All of the above-referenced notices stated that the overpayments were caused by the petitioner intentionally reporting false information to the agency. In this case the agency alleges that the children's father was living in the petitioner's home during the overpayment period. The agency included his income, work, and W-2 schedules to determine the childcare overpayment amount.
5. On October 2, 2015 the agency sent the petitioner a repayment agreement stating that she still owed \$2,492.49 for this childcare overpayment. The repayment agreement references the above-listed three claim numbers plus claim number [REDACTED] for the period from October 12, 2014 to October 31, 2014. It states that the petitioner owes \$54.42 under that claim number. The agency never provided that overpayment notice in their exhibit packet. The time period under this claim number is also included under claim number [REDACTED]
6. The agency has not legally established that the father was in the petitioner's home from January 1, 2014 through May 31, 2015. I find that the father was in the home from June 1, 2015 through June 30, 2015.
7. On October 14, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

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 Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. 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. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1). The agency shall recover child care payments if the authorized payments

would have been less because the parent was absent from an approved activity while the child was in care. Child Care Policy Manual, Chapter 3, §3.5.1.

In this case the only issue is whether the father of the petitioner's children was in her home during the overpayment period. The agency presented a letter and documents from the petitioner's former landlord stating that the father lived with the petitioner during the entire overpayment. The agency had also spoken to the landlord who had reported that the father of the petitioner's children was living with the petitioner during the overpayment period. The landlord lives in Chicago, and was not willing to testify either via telephone or in person. The landlord evicted this petitioner. After evicting the petitioner, the petitioner filed a fair housing complaint against this landlord. It appears that the landlord was no longer willing to have any further contact or dealings with this petitioner.

The petitioner and the father both testified that the father moved in with the petitioner in May of 2015. Prior to that he lived with his grandmother, and only visited the petitioner. He moved in when the petitioner had employment issues and his grandmother went into a nursing home.

Although I find the petitioner and father's testimony questionable, the landlord never testified. The problem with the agency not having the landlord testify is the law concerning the use of hearsay in an administrative hearing. The Wisconsin Supreme Court has ruled that hearsay is admissible in administrative proceedings. *Gehin v. Wisconsin Group Ins. Bd.*, 278 Wis. 2d 111, 133; see also Wis. Stat., §227.45. The Court has also ruled, however, that **administrative bodies should never base findings solely upon uncorroborated hearsay**. *Ibid.* See also *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987), and see *Outagamie County v. Town of Brooklyn*, 18 Wis. 2d 303, 312 (1962).

"Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted." Wis. Stat. §908.02(3). "A 'statement' is (a) an oral or written assertion...of a person, if it is intended by him as an assertion." Wis. Stat. §908.01(1).

Here the agency did just that. They presented a written statement and some written documentation from the landlord showing that the father was living with the petitioner during the overpayment period. Unfortunately, the petitioner is far from credible, and legally I cannot rely on the landlord's multiple hearsay statements. Although I understand the agency's predicament; the landlord was not willing to testify, and they had to go forward, legally I have no other option except to sustain the overpayment only for the month of June. The petitioner and father admit that he was in the home in June, which support the landlord's hearsay statements.

I further note that the numbers did not match up in this case. The overpayment amounts for the father the petitioner were different. The repayment agreement included an additional overpayment claim number for the same overpayment period in a different claim number. However, because I have concluded that the father was not in the home during the period of the overpayment where there was an issue with the numbers this is a moot point.

CONCLUSIONS OF LAW

The agency incorrectly concluded that the petitioner was overpaid \$2,438.07 in childcare benefits for the period from January 1, 2014 through May 31, 2015. The agency correctly established an overpayment for from June 1, 2015 to June 30, 2015.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to rescind the overpayment from January 1, 2014 through May 31, 2015. The agency shall issue a new overpayment notice for the period from June 1, 2015 to June 30, 2015. The agency has 10 days from the date of decision to comply with this order. This appeal is dismissed in all other respects.

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 28th day of January, 2016

\sCorinne Balter
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 28, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud