



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/170293

PRELIMINARY RECITALS

Pursuant to a petition filed November 23, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to a Child Care overpayment, a telephonic hearing was held on December 17, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency established an overpayment of \$2520.41 in child care benefits (CCB) against the petitioner.

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

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She received CCB from at least October 26, 2014-February 28, 2015.
2. On October 24, 2014 [REDACTED] completed an application for FoodShare (FS) and Medical Assistance (MA) wherein he stated that he lived on [REDACTED].
3. On December 30, 2014 the agency received returned mail that it had sent to petitioner's address of record on [REDACTED]. The agency discovered that the returned mail showed a forwarding address for [REDACTED], which also was the address of record for [REDACTED], who was suggested to be the father of petitioner's child.
4. On January 27, 2015 petitioner completed a renewal for CCB and reported living at the [REDACTED] address.
5. On February 25, 2015 petitioner provided a copy of her lease to the agency. It showed herself and her son named as the only lessees.
6. On March 4, 2015 petitioner obtained a notarized affidavit of nonresidence in which she stated under oath that [REDACTED] did not and has not ever lived with her.
7. On October 21, 2015 the agency issued a notice of child care overpayment to petitioner stating that she owed \$2520.41 in CCB due to her failure to report accurate household members due to an intentional program violation. The agency determined that [REDACTED] was living with petitioner for the period of October 26, 2014-February 28, 2015 and that he was not in an approved activity during that time.

DISCUSSION

County, tribal and W-2 agencies are responsible for preventing and correcting improper child care payments, establishing and collecting overpayments, and determining which clients and providers shall be referred for overpayment to the fraud investigation provider, and/or to the District Attorney's office for criminal prosecution. These responsibilities encompass eligibility, authorizations, attendance reporting, and all other activities related to the expenditure of Wisconsin Shares benefits.

Wisconsin Statute §49.195(3), requires county agencies to try to recover all overpayments made under Wis. Stat. §49.155, the statute authorizing subsidized child care, regardless of who was at fault. See Wis. Stat. §49.195(3). This means that even if the agency caused the overpayment, the petitioner will still be "on the hook" for it because s/he received more benefits than s/he was eligible to receive. Therefore, the agency must determine whether any overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover it. Wis. Stat. §49.195(3); Wis. Admin. Code §DCF 101.23(2); See also, *Wisconsin Shares Child Care Assistance Manual*, Ch. 2., available online at http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_2/chapter2clientpre0915.pdf.

The agency found that there was an overpayment of CCB when it determined that petitioner was living with the father of her child, and that he was not in a qualifying activity to qualify for the CCB. See *Child Care Policy Manual (Manual)*, §1.5.0, available online at http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_1/chapter1pre0915.pdf. The petitioner denies that the father of her child lived with her.

In sum, I find that the agency has not shown by a preponderance of the credible evidence that the father of petitioner's child ([REDACTED]) was living with petitioner during the time periods in question. The agency attempted to use Case Comments to show that petitioner reported that [REDACTED] was living with her in February 2015. However, whoever wrote that comment was not available at the hearing to support that

comment, nor contradict petitioner's direct testimony that she never reported that. The agency also used CCAP records to show that petitioner and [REDACTED] had the same address listed over the course of some time. Petitioner agreed that he used her address from time to time for mailing, but that they did not live together. The records for [REDACTED] submitted at hearing show several different addresses he was associated with, as well as his report that he was homeless. [REDACTED] was not made available for the hearing either to explain why he reported the [REDACTED] address on his renewal. The evidence provided equally supports petitioner's version of events, which was that they did have a child in common, that he would be at the [REDACTED] address on some occasions, that he used her address for mailing purposes, and that he used a variety of addresses.

For administrative hearings, the standard of proof is preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action. Petitioner rebutted the agency's case with documents and testimony that she allowed him to use her address for mailing purposes.

Based on the evidence presented, I cannot conclude that the agency has met its burden of proof in establishing that [REDACTED] lived with her during the overpayment periods and that a CCB overpayment exists on that issue.

CONCLUSIONS OF LAW

The agency has not met its burden of proof to establish an overpayment of CCB in Claim # [REDACTED] against the petitioner.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to rescind the CCB overissuance Claim # [REDACTED] against the petitioner, and to cease all collection or recovery activities based upon the claim, had such collections begun. These actions shall be completed within 10 days of the date of this Decision. In all other respects, the petition 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 9th day of March, 2016

\sKelly Cochrane
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 March 9, 2016.

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