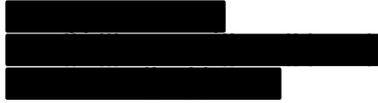




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/171621

PRELIMINARY RECITALS

Pursuant to a petition filed January 26, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care (CC), a hearing was held on March 08, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Early Care Administration (MECA) correctly determined that the Petitioner was overpaid child care benefits for the period of August 2, 2015 to November 30, 2015.

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: [Redacted], Child Care Subsidy Specialist Sr.
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On December 29, 2015, MECA sent the Petitioner a manual Child Care Client Overpayment Notice indicating that she was overpaid \$1,707.18 in benefits for the period of August 2, 2015 to November 30, 2015, due to a client error. (Exhibit R1, pgs. 1-2)
3. On December 30, 2015 Milwaukee Enrollment Services sent the Petitioner an automated notice, advising of her the same overpayment. (Exhibit R1, pgs. 3-4)
4. On January 5, 2016, the Public Assistance Collections Unit sent the Petitioner a Child Care Repayment Agreement. (Exhibit R1, pgs. 5-7)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 26, 2016. (Exhibit 1)

DISCUSSION

“All overpayments made to a client, whether due to client error, agency error or fraud, **must** be formally established to be repaid by the client.” *Wisconsin Shares Child Care Manual (CCM)*¹ §3.5.2; See also §2.1.4.2, *Wis. Admin. Code §DCF 101.23* and *Wis. Stat. § 49.195(3)*

In other words, it doesn't matter who caused the overpayment; the county agency is legally required to seek recovery of all overpayments of child care benefits.

Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. See also *CCM §3.5.2*

The Petitioner does not dispute the fact that she used the childcare benefits in question in the months of August, September and November 2015.

It is the agency's contention that an overpayment of benefits occurred between August 2, 2015 and November 30, 2015, because the Petitioner's income went over 200% of FPL (Federal Poverty Limit) and she became ineligible for benefits. The agency contends that the Petitioner did not report this increase in her income.

For on-going child care benefits, the income limit for eligibility is 200% of FPL. *CCM §1.5.1.2* It is undisputed that Petitioner's household consists of three people. In 2015, 200% of FPL for a household of three people was \$40,180 per year or \$3348.33 per month. See <https://aspe.hhs.gov/2015-poverty-guidelines>

In July 2015, Petitioner received two paychecks, one dated July 3, 2015 for \$1,604.44 and one dated July 17, 2015 for \$1673.59. This totals \$3278.03, which is less than the \$3348.33, 200% FPL income limit. Petitioner was not over income in July 2015. (Exhibits 5 and R5)

In August 2015, the Petitioner received two paychecks, one dated August 14, 2015 for \$1,696.54 and one dated August 28, 2015 for \$2,059.95. (Id.) This totals \$3756.49, which is over the \$3348.33, 200% FPL income limit.

¹ The Wisconsin Shares Child Care Assistance Manual can be viewed on line at:

<http://dcf.wisconsin.gov/childcare/ccpolicymanual/index.htm#Welcome.htm>

Any increase in income that raises the child care assistance group's monthly income above 200% of FPL must be reported by the 10th day after the change has occurred. *CCM §1.5.1.2* Petitioner was told in a Notice of Child Care Eligibility dated May 13, 2015, that, "You must report to your worker changes in your situation that may change your eligibility no later than 10 calendar days after the change." (See Exhibit R5, pgs. 14 and 15) In addition the Child Care Authorization Information letters that were sent to the Petitioner, advised her to report changes of income within 10 days. (Exhibit 4)

Petitioner's income went over the 200% FPL limit on August 28, 2015, so she needed to report that change by September 7, 2015. There is nothing in the record showing that the Petitioner reported the increase in her income by September 7, 2015.

"If an eligibility change is not reported timely, the change should be considered effective the date of the change..." *CCM §3.5.1* Thus, the change in income is considered effective August 28, 2015. Accordingly, the child care overpayment for the month of August is limited to August 28, 2015 to August 31, 2015. According to pages 14 and 15 of Exhibit R4, the overpayment for August works out to be \$88.86.

Looking at the paystubs provided by Petitioner in Exhibit 5, which is the same as the Work Number information in Exhibit R5, I can find no error in MECA's determination that the Petitioner continued to be over the income limit in September 2015 and was therefore overpaid benefits for that entire month.

It is undisputed that Petitioner was under the income limit for the month of October 2015 and therefore, no overpayment occurred in that month.

Looking at Exhibits 5 and R5, Petitioner went over the income limit in November 2015, but not until November 20, 2015. Again, this change in income was not timely reported, so the overpayment begins effective November 20, 2015. Looking at Exhibit R4 it does not appear that the Petitioner used child care benefits after November 20, 2015. As such, there is no overpayment for the month of November 2015.

CONCLUSIONS OF LAW

- 1) MECA correctly determined that Petitioner was overpaid child care benefits in August and September 2015, but its calculation of the overpayment is not correct, given the dates the changes in income became effective.
- 2) MECA correctly determined that there was no overpayment for October 2015
- 3) MECA incorrectly determined that there was an overpayment of benefits for November 2015.

THEREFORE, it is

ORDERED

That MECA amend claim number [REDACTED] to reflect an overpayment from August 28, 2015 through September 30, 2015, only, in the amount of \$545.46 (\$88.86 for August 2015 and \$456.60 for September 2015) MECA shall take all administrative steps to complete this task within 10 days of this decision.

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 23rd day of May, 2016

\sMayumi M. Ishii
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 May 23, 2016.

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