



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/171761

PRELIMINARY RECITALS

Pursuant to a petition filed February 01, 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 02, 2016, 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:



Respondent:

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

By: 
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 # ) is a resident of Milwaukee County.

2. Petitioner was sent a notice dated December 29, 2015 that informed her that she had been overissued child care benefits in the amount of \$1198.67 for the period of December 7, 2014 through February 28, 2015.
3. The reason for the overissuance alleged here is agency error. Petitioner began employment and properly reported it. This was in July 2014. The agency did not note that this increased household income to more than 200% of the Federal Poverty level for a household of 3 and continued child care benefits. The agency discovered the error in December 2015.
4. Petitioner's household consists of 3 – herself, spouse and child.
5. The gross income limit for ongoing child care eligibility is 200% of the Federal Poverty Level - \$3298.00 for a group of 3 as of February 1, 2014 and \$3348.00 as of February 1, 2015. See Operations Memo #s 14-05, dated February 21, 2014 and 15-08, dated March 3, 2015; respectively. During the period for which the agency seeks recovery here Petitioner's gross household was in excess of these limits.

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 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 provisions that note an ongoing eligibility income limit of 200% of the Federal Poverty level (Manual, §1.6.3).

Also relevant here is the following Manual section:

3.5.2 Overpayments - Recovery

Recovery of Client Overpayments

All overpayments made to a client, whether due to client error, administrative error, or fraud, **must** be formally established to be repaid by the client. ...

...

Statute of Limitations

Claims for incorrect payments due to an intentional program violation or client error may be established for up to six (6) years prior to the notification date of the overpayment, also known as the date of discovery.

The overpayment period for a non-client error (also known as administrative error) claim ends with the month the error last occurred and extends back 12 months or when the error first became effective, whichever is most recent. The overpayment period for a non-client error cannot begin more than 12 months prior to the notification date of the overpayment.

I am concluding that Petitioner was overissued child care benefits as of December 2014. Her household was over 200% of the Federal Poverty Level as of July 2014 but, as this was agency error, the recovery can only go back 12 months from the discovery. The agency correctly limited the overpayment to the 12 months.

Petitioner does not believe it fair to recover an overpayment that was not the fault of her or family. Nonetheless, the law and policy of the Wisconsin Shares Child Care Program requires recovery regardless of who caused the error. The Division of Hearings and Appeals cannot ignore statutes, federal regulations, administrative code provisions or policy that is not in conflict with those laws.

CONCLUSIONS OF LAW

That the evidence demonstrates that the agency correctly seeks recovery of the agency error overpayment involved here.

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.

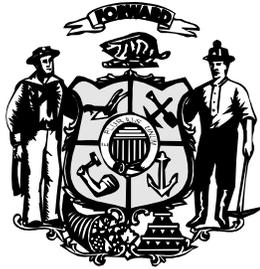
APPEAL TO COURT

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 26th day of May, 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 May 26, 2016.

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