



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/172068

PRELIMINARY RECITALS

Pursuant to a petition filed February 16, 2016, 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 March 09, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether (1) the petitioner timely appealed a child care overpayment notice, and (2) if timely, whether the agency concluded that the petitioner was overpaid \$5,874.09 in child care benefits from October 1, 2014 to July 31, 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]

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

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Milwaukee County. She was a household of two consisting of herself and her child.

2. On December 4, 2015 the agency sent the petitioner a notice of child care overpayment. The notice stated that, under claim number [REDACTED], the petitioner was overpaid \$5,874.09 in child care benefits from October 1, 2014 to July 31, 2015. The notice went on to state that the petitioner had until January 18, 2016 the request a hearing with the Division of Hearings and Appeals.
3. On January 7, 2016 the Division of Hearings and Appeals received a Request for Fair Hearing from the petitioner. That request for fair hearing was categorized as a child care benefit case for the period from December 1, 2014 to March 31, 2015 and June 1, 2015 through June 31, 2015. The case summary indicates that the petitioner had authorization during that time period. That authorization would have caused part of the overpayment at issue in this appeal. On January 19, 2016 the petitioner withdrew that Request for Fair Hearing.
4. The Division of Hearings and Appeals received another Request for Fair Hearing on February 16, 2016.
5. The petitioner applied for child care assistance on May 6, 2014. She reported that she works 24 hours per week with a rate of pay of \$15 per hour. This is a monthly gross income of \$1,548. The petitioner's employer verified this information.
6. On May 7, 2014 the agency sent the petitioner a notice of Eligibility of Child Care. The notice stated that the petitioner was eligible for child care assistance, and that the petitioner must report any changes that may impact her eligibility for child care assistance within 10 days of the change.
7. On November 14, 2014 the petitioner completed a six month report form. On the form the petitioner reported that she continued to work 24 hours per week with a rate of pay of \$15 per hour. This is a monthly gross income of \$1,548. The petitioner's employer verified this information.
8. On November 20, 2014 the agency sent the petitioner a notice stating that she was eligible for child care assistance, and that she must report any changes that may impact her eligibility for child care assistance within 10 days of the change.
9. The petitioner's monthly gross income was as follows:
 - a. \$2,149.34 in September 2014
 - b. \$3,418.13 in October 2014
 - c. \$2,731.88 in November 2014
 - d. \$2,591.25 in December 2014
 - e. \$2,697.50 in January 2015
 - f. \$2,561.33 in February 2015
 - g. \$2,525.79 in March 2015
 - h. \$2,718.75 in April 2015
 - i. \$3,543.08 in May 2015
 - j. \$2,419.48 in June 2015
 - k. \$2,750.34 in July 2015
10. The petitioner never reported an increase in income. The petitioner's income was higher than what she reported because she worked additional overtime hours at an overtime rate of pay.
11. The petitioner received the following child care benefits:
 - a. \$791.32 in October 2014

- b. \$1,047.15 in November 2014
 - c. \$849.32 in December 2014
 - d. \$849.32 in January 2015
 - e. \$849.32 in February 2015
 - f. \$942.04 in March 2015
 - g. \$872.05 in April 2015
 - h. \$855.75 in May 2015
 - i. \$214.87 in June 2015
 - j. \$776.25 in July 2015
12. The petitioner was eligible for the following child care benefits:
- a. \$0 in October 2014
 - b. \$0 in November 2014
 - c. \$644.32 in December 2014
 - d. \$0 in January 2015
 - e. \$644.32 in February 2015
 - f. \$708.54 in March 2015
 - g. \$0 in April 2015
 - h. \$0 in May 2015
 - i. \$176.12 in June 2015
 - j. \$0 in July 2015

DISCUSSION

An appeal of a negative decision concerning child care must be filed within 45 days of the negative decision. Wis. Adm. Code, §HA 3.05(3). The petitioner's first request for a fair hearing was received by the Division of Hearings and Appeals on January 7, 2016. She testified that she believed this request was for the overpayment. She withdrew her appeal when the agency told her that the issue had been resolved. The case was categorized as a child care benefits case. The case summary under that case indicates that the agency did not believe there was an appeal issue because child care was authorized during the months in question. There appears to have been some communication. The petitioner believed this to mean that the overpayment issue had been resolved, and that is why she withdrew her appeal. The appeal may have been categorized incorrectly based upon information provided by the petitioner on her request for fair hearing. However, given this confusion, and that fact that the Division of Hearings and Appeals received a request for fair hearing within the time limit, I conclude that the petitioner timely appealed this overpayment.

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. Wis. Adm. Code, §DCF 101.23(1)(g).

A parent is eligible for child care services if she needs the care to attend work or to participate in a different approved activity like the W-2 program. Wis. Stat., §49.155(1m)(a). A household receiving child care assistance must also have household gross income at or below 200% of the Federal Poverty Limit (FPL). Child Day Care Manual, §1.5.1.2. The agency recover child care payments if the parent was not in an approved activity or not financially eligible for the program. Child Day Care Manual, §3.5.1.

From September 2014 to February 2015 200% FPL for a household size of 2 was \$2,622.00. From March 2015 to July 2015 200% FPL was \$2,655.00 for a household size of 2. The petitioner's monthly gross income increased above her reported amount before September 2014. The petitioner never reported an increase in income. The petitioner was working overtime, and never reported that to the agency. The agency discovered and investigated this overpayment when they received a state wage match showing that the petitioner's income was significantly higher than what she had reported to them. I have reviewed the agency's calculations in this case. The calculations are correct. The agency has only calculated an overpayment for the amount paid by the Wisconsin Shares Program that the petitioner was not eligible to receive.

CONCLUSIONS OF LAW

- (1) The petitioner timely appealed a child care overpayment notice.
- (2) The agency correctly concluded that the petitioner was overpaid \$5,874.09 in child care benefits from October 1, 2014 to July 31, 2015.

THEREFORE, it is

ORDERED

That 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 14th day of March, 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 March 14, 2016.

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