



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION  
[REDACTED]  
CCO- 172677

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**PRELIMINARY RECITALS**

On March 10, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03, to challenge a decision by the Dane County Department of Human Services regarding a Child Care (CC) overpayment. The hearing was held on July 6, 2016, by telephone.

The issue for determination is whether the agency established an overpayment of \$199 (claim # [REDACTED]) in child care benefits (CCB) against the petitioner because she received CCB when she was not working and was not in any approved W-2 activity.

There appeared at that time 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: [REDACTED] Overpayment Specialist  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. Petitioner received child care benefits for her child while she was not working nor in any W-2 activity from February 5, 2012 to May 6, 2012.
3. By a notice dated February 26, 2016 the county informed petitioner that she was overpaid \$1533.77 in child care for the services provided from February 5, 2012 to May 6, 2012 because she was not employed nor in any W-2 activity for that time period.

## 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 the 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). The agencies must determine whether an overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover the overpayment. Wis. Stat. §49.195(3); Wis. Admin. Code §DCF 101.23(2); See also, Wisconsin Shares Child Care Assistance Manual (*Manual*), Ch. 3., available online at [http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter\\_3/chapter3-client-proginteg-09282015.pdf](http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_3/chapter3-client-proginteg-09282015.pdf).

In this case, the agency established the overpayment at issue because petitioner had an authorization for child care which was paid out when she was not working, nor in a W-2 approved activity. She failed to report her end of employment which occurred April 17, 2015 which cause the authorization to continue. She was required to report the end of employment to the agency within 10 days. See *Manual*, §1.9.1, available online at [http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter\\_1/chapter1-eligibility-12302015.pdf](http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_1/chapter1-eligibility-12302015.pdf). She admits she did not report it because she had medical issues and was in the hospital. Unfortunately, even honest errors in reporting are cause for overpayment.

Thus, as to the overpayment established, petitioner has not rebutted the agency's case as she has not provided the evidence to show that she was eligible for the child care during this time. There is no evidence to show that she was in any approved activity for the time periods identified under this overpayment. I have reviewed the calculations and find no errors, and petitioner has not raised any issue with them either. Accordingly, I uphold the county's overpayment determination.

I add that petitioner stated that she did not take her child to day care during this time and therefore the payment was made to the provider in error. If the provider affirmatively reported her child in attendance, when the child was not there, she may make a referral for fraud by:

- 1) Submit allegations by filling out the Report Child Care Fraud form
- 2) Send an e-mail to [dcfmbchildcarefraud@wisconsin.gov](mailto:dcfmbchildcarefraud@wisconsin.gov), or
- 3) Write to:  
Department of Children and Families  
Fraud Detection and Investigation Unit

PO Box 8916  
Madison, WI 53708-8916

See [http://www.dcf.wi.gov/program\\_integrity/report\\_fraud.htm](http://www.dcf.wi.gov/program_integrity/report_fraud.htm). She may also always request that the provider reimburse her what was paid to it.

I understand that petitioner was going through some difficult times and was doing the best she could. However, this is not a fraud case; simple error can establish an overpayment. And while petitioner may find my decision unfair, administrative law judges do not have the power to address issues of fairness. We are required to apply the law as written. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977).

### **CONCLUSIONS OF LAW**

The agency established an overpayment of \$199 (claim # [REDACTED]) in CCB against the petitioner because she received CCB when she was not in any approved activity.

**THEREFORE, it is**

**ORDERED**

The petition for review herein 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, **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 8th day of July, 2016.

\s \_\_\_\_\_  
Kelly 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 July 8, 2016.

Dane County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud