



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/172752

PRELIMINARY RECITALS

Pursuant to a petition filed March 10, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Racine County Department of Human Services in regard to Child Care (CC), a telephonic hearing was held on April 14, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the agency established an overpayment of \$1533.77 (claim # [REDACTED]) in child care benefits (CCB) against the petitioner because she took her child to child care when she was not working and was not in any approved W-2 activity.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

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

By: [REDACTED] Fraud Specialist
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine 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 (WSCCA Manual), Ch. 2., available online at http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_2/chapter2-11012008.pdf.

In this case, the agency established the overpayment at issue because petitioner had and used an authorization for child care when she was not working, nor in a W-2 approved activity. At the hearing, the evidence showed that she had reported to the agency on March 13, 2012 that she ended her employment on February 7, 2012. She was then referred to W-2. However, she did not complete her W-2 activities, and was not enrolled in W-2 until May 22, 2012.

A parent is eligible for child care services if she needs the care to:

1. Meet the school attendance requirement under s. [49.26 \(1\) \(ge\)](#).
 - 1m. Obtain a high school diploma or participate in a course of study meeting the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation, if the individual is not subject to the school attendance requirement under s. [49.26 \(1\) \(ge\)](#) and at least one of the following conditions is met:
 - a. The individual is 18 or 19 years of age.
 - b. The individual has not yet attained the age of 18 years and the individual resides with his or her custodial parent or with a kinship care relative under s. [48.57 \(3m\)](#) or with a long-term kinship care relative under s. [48.57 \(3n\)](#) or is in a foster home licensed under s. [48.62](#), a subsidized guardianship home under s. [48.623](#), a group home, or an independent living arrangement supervised by an adult.
2. Work in an unsubsidized job, including training provided by an employer during the regular hours of employment.
3. Work in a Wisconsin works employment position, including participation in job search, orientation and training activities under s. [49.147 \(2\) \(a\)](#) and in education or training activities under s. [49.147 \(3\) \(am\)](#), [\(4\) \(am\)](#) or [\(5\) \(bm\)](#).

- 3m.** Participate in a job search or work experience component of the food stamp employment and training program under s. [49.79 \(9\)](#).
- 4.** If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education, including an English as a 2nd language course; literacy tutoring; or a course of study meeting the standards established by the state superintendent of public instruction under s. [115.29 \(4\)](#) for the granting of a declaration of equivalency of high school graduation. An individual may receive aid under this subdivision for up to 2 years.
- 5.** Participate in a course of study at a technical college, or participate in educational courses that provide an employment skill, as determined by the department, if the Wisconsin works agency determines that the course or courses would facilitate the individual's efforts to maintain employment. An individual may receive aid under this subdivision for up to 2 years.

Wis. Stat., §49.155(1m); See also [Wisconsin Shares Child Care Assistance \(WSCCA\) Manual](#), Chapter 1, available online at http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_1/chapter1pre1108.pdf.

Thus, as to the overpayment established from February 5, 2012 to May 6, 2012, 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 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 \$1533.77 (claim # [REDACTED]) in CCB against the petitioner because she took her child to child care when she was not working and was not in any approved W-2 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, 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 13th day of June, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 13, 2016.

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