



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/172791

PRELIMINARY RECITALS

Pursuant to a petition filed March 11, 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 May 17, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether MECA correctly determined that the Petitioner was overpaid child care benefits for the period of May 1, 2014 through May 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: Attorney [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:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. [Redacted] is the primary person for CARES case # [Redacted]
2. Petitioner married [Redacted] on August 8, 2011, but filed for divorce in September 2015. (Testimony of [Redacted]; Exhibit 3, pg. 237)

3. Petitioner and [REDACTED] have one child in common, [REDACTED] who was born in October 2012. (Testimony of Petitioner)
4. On June 11, 2013, [REDACTED] completed an ACCESS application for Child Care. In that application, the [REDACTED] reported living at an address on [REDACTED] [REDACTED] reported only two people in her household, herself, and her son. (Exhibit 3, pgs. 60-62)
5. The record contains no Six Month Report Form for November/December 2013.
6. On May 2, 2014, [REDACTED] completed an ACCESS renewal for childcare benefits. In that renewal, [REDACTED] reported living at an address on [REDACTED] and she indicated there were only two people in her household, herself and her son. (Exhibit 3, pgs. 85-87)
7. On November 6, 2014, [REDACTED] submitted a Six Month Report form, in which she indicated she was still living at the [REDACTED] address and that there were no changes in household composition. (Exhibit 3, pgs. 120 and 121)
8. On May 15, 2015, [REDACTED] completed an ACCESS renewal for childcare, in which she, again, indicated she was living at the [REDACTED] address and that there were only two people in her household, herself and her son. (Exhibit 3, pgs. 144-146)
9. The [REDACTED] address is owned by Petitioner's parents. (Testimony of Petitioner; Exhibit 3, pg. 234)
10. Petitioner had various employment and income between May 1, 2014 and May 31, 2015. (Exhibit 3, pgs. 23-51)
11. On February 29, 2016, MECA sent the Petitioner two, manual Child Care Client Overpayment Notices:
 - Claim [REDACTED] in the amount of \$5,619.48 for the period of May 1, 2014 through December 31, 2014.
 - Claim [REDACTED] in the amount of \$5,280.00 for the period of January 1 2015 through May 31, 2015.

(Exhibit 3, pgs. 4-10)
12. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 11, 2016. (Exhibit 2)

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.

However, when overpayments are caused by agency error, the claim only extends back 12 months from the date of discovery. *CCM* §3.5.2

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

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

Liability for overpayments, “shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. [49.148](#), [49.155](#), [49.157](#), or [49.19](#), Stats., during the period that he or she is an adult member of the same household...Liability for repayment of an overpayment shall be joint and several. *Wis. Admin. Code DCF 101.23(3)(a) and (b)*.

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*

In the case at hand, the agency asserts that the Petitioner was living with the [REDACTED] from May 1, 2014 through May 31, 2015, and as such, [REDACTED] needed to report the Petitioner and his income on her applications and Six-Month Report Form. The agency asserts that the [REDACTED] failed to do this, and so an overpayment of benefits occurred.

In determining eligibility for child care assistance, income of all assistance group members, except for minors and dependent 18 year olds, must be counted. *CCM §1.5.1*

Assistance Groups are defined as an individual who is a custodial parent or placement parent, and their dependent children, and all dependent children with respect to whom the individual’s dependent child is a custodial parent...The Assistance Group also includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual, and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent.” *Wisconsin Shares Child Care Assistance Manual (CCM) §1.4.1*

The Petitioner did not dispute the fact that [REDACTED] used the childcare in question, nor did he contest the agency’s calculation of her income, [REDACTED]’s income or the overpayment calculation. The Petitioner argued that the agency erred in its overpayment determination, because he was not living with [REDACTED] between May 1, 2014 and May 31, 2015. Petitioner claimed that the marriage effectively failed and that they separated. Petitioner claimed that he used the [REDACTED] address as his mailing address, because the residence is owned by his parents and is, therefore, stable.

During the time in question, [REDACTED] reported living at [REDACTED] [REDACTED] in her renewals and six month report form. [REDACTED] signed these documents, affirming, under penalty of perjury, that the information was true and correct. Thus, it is reasonable to conclude that [REDACTED] was living at the [REDACTED] [REDACTED] Address between May 1, 2014 and May 31, 2015.

DCF argues that certain Facebook posts show that the Petitioner and [REDACTED] were in a continuous relationship and therefore, prove they were living together during the entire overpayment period. While a friendly relationship with one’s spouse might increase the likelihood that a couple would live together, that is not absolute evidence of cohabitation. Indeed, Petitioner admitted in his testimony that he has had a girlfriend during his marriage to [REDACTED]; that he has four children by three different women and that he doesn’t pay child support for all of them. As such, it would not be surprising for any woman to decide that Petitioner is a less than ideal partner.

Of the evidence presented by MECA, the following documents provided an address for Petitioner:

1. A Work Information Release From from [REDACTED], showing that he was employed as of 11/10/2014, and that his address was listed as [REDACTED] [REDACTED]. (Exhibit 3, pg. 28)
2. My Vote Wisconsin website print-out showing [REDACTED] last registered to vote in November 2014 and listed an address at [REDACTED] [REDACTED]. (Exhibit 2, pgs. 214-215)
3. A CCAP print out for case [REDACTED], showing an address on [REDACTED] [REDACTED] that was updated on July 31, 2014. (Exhibit 2, pg. 232)

4. A CCAP print out for case [REDACTED], showing an address on [REDACTED] [REDACTED] that was updated on September 2, 2015. (Exhibit 2, pg. 235)
5. A "Clear Report" from [REDACTED] showing an address for [REDACTED] at [REDACTED] [REDACTED] [REDACTED] (Exhibit 2, pg. 231)

With regard to the [REDACTED] report, it is not good evidence. While it might provide the agency with a good investigative lead, it is a report from a data mining company that contains multiple layers of hearsay and no information regarding who provided the information or when. As such, that report has been disregarded.

With regard to the CCAP printout for case [REDACTED], it falls outside of the overpayment period in question. As such, that has been disregarded.

With regard to the CCAP printout for case [REDACTED], it is unclear who provided the information to the court, where that person obtained the information from, nor how current the information was. As such, that has been disregarded, as well.

With regard to the information from [REDACTED], the document appears to be a regularly kept business record and is therefore reliable enough to establish that [REDACTED] listed the [REDACTED] [REDACTED] address as contact information for the Petitioner. However, the document did not list the address as [REDACTED]'s residence.

The most compelling evidence that provides direct evidence of the Petitioner's residence is the My Vote Wisconsin website printout. That website appears to be maintained by a government agency, the Wisconsin Government Accountability Board (GAB), which is charged with overseeing and investigating alleged violations of Wisconsin's election, campaign finance, lobbying, and code of ethics laws. GAB is also statutorily responsible for helping local officials to administer elections and providing training to local election officials, lobbyists, and others. See <http://legis.wisconsin.gov/lab/reports/14-14highlights.htm> ; See also Wis. Stats. §§15.60 and 20.511

As such, the information from that website can be considered reliable, both as a regularly kept record of the GAB and as a public record maintained pursuant to the duties of the GAB. Further, if Petitioner was not living at the [REDACTED] address, but voting from that area, he might very well be committing voter fraud, which is a felony offense.² See Exhibit 2, pg. 220

Accordingly, it is found that the Petitioner was living at the [REDACTED] address as of November 4, 2014 and that an overpayment of child care benefits occurred during that time.

There is no indication in the GAB exhibit that the Petitioner reported the [REDACTED] as his residence between May 2014 and November 4, 2014.

In the absence of reliable evidence establishing Petitioner's address prior to November 4, 2014, that part of the overpayment cannot be upheld.

CONCLUSIONS OF LAW

MECA correctly determined that the Petitioner was overpaid child care benefits for the period of November 4, 2014 through May 31, 2015.

² http://www.gab.wi.gov/sites/default/files/page/election_rights_responsibilities_7_31_2012_final_p_20046.pdf

THEREFORE, it is

ORDERED

That MECA amend Claim [REDACTED] to reflect an overpayment for the period of November 4, 2014 through December 31, 2014, only. MECA shall take all administrative steps to complete this task within 10 days of this decision.

In all other respects, 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 23rd day of June, 2016

\sMayumi M. Ishii
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 23, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud
Attorney [REDACTED]