



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO- 173230

PRELIMINARY RECITALS

On March 29, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03, to challenge a decision by the Milwaukee Early Care Administration - MECA regarding Child Care. The hearing was held on April 19, 2016, at Milwaukee, Wisconsin. .

The issue for determination is whether MECA correctly determined the Petitioner was overpaid \$1,383.00 in child care benefits between October 5, 2014, and May 31, 2015.

There appeared at that time and place 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: Attorney [REDACTED]
Department of Children and Families
Office of Legal Counsel

ADMINISTRATIVE LAW JUDGE:

Mayumi Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 15, 2014, the Petitioner obtained employment at "[REDACTED]", hereinafter referred to as [REDACTED]. She was employed with that agency until July 4, 2015. (Exhibit 2, pgs. 75-76)
3. The Petitioner worked an average of 22 hours per week, earning \$9.00 an hour. She did not receive her first paycheck until sometime in October 2014. (Exhibit 2, pgs. 76)

4. On October 23, 2014, the Petitioner completed a Six Month Report Form, but she did not report her employment at [REDACTED]; she only reported employment with an agency called [REDACTED], hereinafter referred to as [REDACTED]. (Exhibit 2, pgs. 17-24)
5. On October 27, 2014, Milwaukee Enrollment Services (MILES) sent the Petitioner a summary of what she reported in the Six Month Report Form to verify the information. The summary also included information about a third employer, referred to as "[REDACTED]". The Petitioner was instructed to contact the agency if any of the information was incorrect. (Exhibit 2, pgs. 25-33)
6. On or about November 5, 2014, the Petitioner provided her paystubs for [REDACTED]. She also submitted an Employer Verification of Earnings and a letter from "[REDACTED]" to verify that her employment with [REDACTED] had ended. (Exhibit 2, pgs. 34-39)
7. There is no indication that the Petitioner corrected the information in the summary to include her employment with [REDACTED]. (Exhibit 2, pgs. 15-16)
8. On April 24, 2015, the Petitioner completed what was likely a renewal and on April 27, 2015, MILES sent the Petitioner a summary of what she told them which did not include information about her employment with [REDACTED]. The Petitioner was instructed to contact the agency if the information was not correct. (Exhibits 2, pgs. 50-56)
9. Also on April 24, 2015, the Petitioner provided her paystubs for [REDACTED]. (Exhibit 2, pgs. 57-60)
10. On April 27, 2015, the Petitioner reported her employment with [REDACTED]. (Exhibit 2, pg. 2; testimony of [REDACTED])
11. On February 26, 2016, The Department of Children and Families (DCF) sent the Petitioner a manual Child Care Client Overpayment Notice, claim number [REDACTED], alleging that the Petitioner was overpaid \$1,383.00 in benefits for the period of October 4, 2015 to May 31, 2015. (Exhibit 2, pgs.1-2)
12. On February 29, 2016, Milwaukee Enrollment Services sent the Petitioner an automated Child Care Overpayment Notice, alleging the same overpayment. (Exhibit 2, pgs. 3-4)
13. On March 2, 2015, the Public Assistance Collections Unit sent the Petitioner a repayment agreement. (Exhibit 2, pgs. 5-7)
14. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 29, 2016. (Exhibit 1)

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.

¹ The Wisconsin Shares Child Care Assistance Manual in effect at the time in question can be viewed on line, under “PDF Versions” at:

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

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*

It is the agency's contention that an overpayment of benefits occurred between October 5, 2014 and May 31, 2015, because the Petitioner failed to report the income from her employment at [REDACTED]

The child care benefit received is dependent upon income. "The parent's share of the cost is determined on a sliding scale, depending upon family income, family size, the number of children in subsidized care and the type of child service chosen." <http://dcf.wi.gov/childcare/wishares/eligibility.htm> So, if the Petitioner wasn't reporting all of her income, she would receive a bigger benefit, than she was entitled to receive.

"Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10-days of the change." *CCM §1.15.1* This includes changes involving starting or ending an approved activity / job, increases in income of at least \$250 or decreases in income of \$100 or more. *CCM §1.15.2*

If the change is not reported timely, the change should be considered effective the date of the change. The overpayment period would begin the first full week following the change. *CCM §2.1.5.1*

The Petitioner obtained employment at [REDACTED] in September 2014, but did not report that employment until seven months later, on April 27, 2015. The Petitioner testified that she did report the employment to the agency.

First, even if the Petitioner reported her income from [REDACTED] the fact remains that she must pay back an overpayment, because the agency did not count that income when determining her eligibility. Second, the Petitioner's testimony is not credible. The Petitioner provided income verification for her job at [REDACTED] and she provided verification from "[REDACTED]" to prove her employment with them ended. So, the Petitioner knew she needed to provide verification of employment/income. Had the Petitioner reported her employment at [REDACTED], one would think she would have provided verification of her income/hours from that job, but she did not. Accordingly, it is found that an overpayment occurred, because the Petitioner did not report her employment with [REDACTED]

What is not clear is whether the overpayment period has been correctly calculated. The Petitioner did not receive her first bi-weekly paycheck until October 2014. (Exhibit 2, pgs. 75 and 76) Her income that month was \$1360.00, but the record does not reflect when in October 2014 the Petitioner received that first paycheck, nor the amount of that check. As such, the agency has not met its burden to prove that the overpayment began October 5, 2014. The agency will have to go back and determine when Petitioner received her first paycheck and the amount of the check.

If Petitioner disagrees with the redetermination of the overpayment amount, she will have to file a NEW appeal, limited to the issue of the dollar amount of the overpayment, only.

CONCLUSIONS OF LAW

1. MECA correctly determined the Petitioner was overpaid child care benefits, because she failed to report her employment/income from [REDACTED]

2. MECA has not met its burden to prove it correctly calculated the amount of the overpayment.

THEREFORE, it is

ORDERED

That MECA determine when the Petitioner received her first paycheck from █████ in October 2014. MECA shall begin the overpayment period the first full week following receipt of income over \$250 from █████, per *CCM* §§1.15.1 and 1.15.2. MECA shall issue a notice to the Petitioner advising her of its determination. MECA shall take all administrative steps necessary to complete these tasks within ten 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.

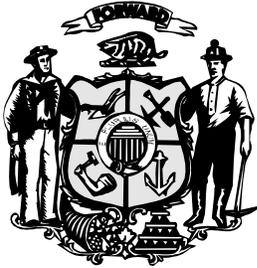
APPEAL TO COURT

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 by, 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 11th day of July, 2016.

\s _____
Mayumi Ishii
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 11, 2016.

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