



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/173242

PRELIMINARY RECITALS

Pursuant to a petition filed March 28, 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 03, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether MECA correctly determined that the Petitioner was overpaid \$1,668.44 in benefits for the period of September 7, 2014 to June 30, 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], Child Care Subsidy Specialist Senior
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. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. On July 14, 2014, the Petitioner accepted employment at a counseling center. (Exhibit 2, attachment 4, pg. 18)

3. The Petitioner reported this change in employment on July 29, 2014. (Exhibit 2, attachment 3, pg. 1)
4. On August 7, 2014, the Petitioner provided an Employer Verification of Earnings form, indicating she worked 20 hours per week at \$12.25 per hour. This works out as follows:
 

20 hours per week x \$12.25 per hour x 4.3 average weeks per month = \$1053.50  
reported monthly income.

(Exhibit 4, pg. 19)
5. On December 3, 2014, the Petitioner completed an ACCESS renewal, in which she reported continued employment at the counseling center, though she did not report any changes in the number of hours worked. (Exhibit 2, attachment 4, pgs. 21-36)
6. On December 15, 2014, the Petitioner submitted an Employer Verification of Earnings form showing that she worked 20 hours per week at \$12.25 per hour and that she received 7.5 hours of holiday pay per week at \$18.97 an hour. This works out as follows:
 

20 hours per week x \$12.25 per hour x 4.3 average weeks per month = \$1053.50  
monthly regular pay

7.5 hours per week x \$18.97 per hour x 4.3 average weeks per month = \$611.78  
monthly holiday pay

\$1053.50 + \$611.78 = \$1665.28 reported monthly income

(Exhibit 2, attachment 4, pg. 37)
7. Petitioner's actual income was higher than reported. (Exhibit 2, attachment 4, pgs. 54 and 56)
8. On June 1, 2015, the Petitioner completed an ACCESS six-month report form, in which she reported continued employment with the counseling center, but that she was now working 30 hours per week at \$13.25 an hour. This works out as follows:
 

30 hours per week x 13.25 an hour x 4.3 average weeks per month = \$1709.25  
monthly pay.

(Exhibit 2, attachment 4, pg. 45)
9. On or about June 1, 2015, the Petitioner provided a letter from her employer, confirming the above information, and indicating that the Petitioner was paid on the 15<sup>th</sup> of the month and the last day of the month.
 

The Petitioner also provided three pay checks, one from April 2015 and two from May 2015. The paychecks showed the Petitioner was actually working more than 30 hours per week. Based upon the earning in Petitioner's May paychecks, her reported monthly income was:

\$928.39 + \$1,048.50 = \$1976.89 monthly income. (Exhibit 2, attachment 4, pgs. 47-50)
10. On March 23, 2016, MECA sent the Petitioner a Child Care Client Overpayment Notice, claim [REDACTED], indicating she was overpaid \$1,668.44 in benefits for the period of September 7, 2014 to June 30, 2015. (Exhibit 2, attachment 1, pgs. 1-2)
11. On March 24, 2016, Milwaukee Enrollment Services (MILES) sent the Petitioner an automated Child Care Overpayment Notice, Claim [REDACTED], alleging the same overpayment. (Exhibit 2, attachment 1, pgs. 3-4)
12. On April 4, 2016, the Public Assistance Collections Unit (PACU) sent the Petitioner a Child Care Repayment Agreement. (Exhibit 2, attachment 1, pgs. 5-7)
13. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 28, 2016. (Exhibit 1)

## DISCUSSION

The county agency is legally required to seek recovery of all overpayments of child care benefits. Wis. Stat. § 49.195(3) An overpayment occurs when an individual receives more childcare benefits that he or she was entitled to received. Wis. Admin. Code §DCF 201.04(5)(a) The county agency / Department of Children and Families must determine whether an overpayment has occurred; it must notify the recipient, and it must give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3), *Wisconsin Shares Child Care Manual (CCM Revised 12/10/2013)*, §§2.1.5.2 and 2.1.5.3 See also, Wis Stats. Sec. § 49.152(2), & § 227.42, *et. seq.*

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *CCM §2.1.5.2 Revised 12/10/2013*. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the Petitioner. This provision may be viewed online by the Petitioner at [http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter\\_1/chapter1pre0915.pdf](http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_1/chapter1pre0915.pdf).

In the case at hand, the agency asserts that the Petitioner received more child care benefits than she was entitled to, because she failed to timely report increases in her income. The Petitioner did not dispute the fact that she used child care during the time in question and the Petitioner indicated that the income information from her employer was accurate.

“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 Revised 12/10/2013* 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 Revised 12/10/2013*

When changes are reported timely (but prior to adverse action), the overpayment period begins the first of the month, following the date of report. *CCM §2.1.5.1 Revised 12/10/2013*

However, when changes are not reported timely, the change becomes effective the actual date of the change and the overpayment period begins the first full week following the change. *Id.*

In July 2014, the Petitioner reported her monthly income to be \$1053.50. Petitioner’s income first exceeded the reported amount by \$250 beginning in September 2014, when she earned \$1,816.89. (See Exhibit 2, attachment 4, pgs. 54 and 56)

Petitioner is paid on the 15<sup>th</sup> of the month and the last day of the month. (See Exhibit 2, attachment 4, pgs. 47, 48-50) So, Petitioner’s last check in September 2014, that put her over the reporting limit, would have been dated Tuesday, September 30, 2014.

Petitioner needed to report the change in income by October 10, 2014. There is no indication that the Petitioner reported this increase in income by the October 10, 2014 date. (See Exhibit 2, attachment 3, pg. 2) Thus, an overpayment of benefits occurred.

Per *CCM §2.1.5.1 Revised 12/10/2013*, the overpayment period would begin the week of October 6, 2016, the first full week after the effective date of the change. As such, the agency did not correctly determine the beginning date of the overpayment period.

In October and November 2014, the overpayment continued, because the Petitioner's income continued to be higher than reported. She earned \$1,914.88 and \$2,063.16 in those months, respectively. (See Exhibit 2, attachment 4, pgs. 54 and 56)

In her December 2014 renewal, the Petitioner reported her average monthly income to be \$1665.28. Her actual earnings were about \$300 higher in December. (See Exhibit 2, attachment 4, pgs. 54 and 56) The Petitioner's income continued to be at least \$300 higher than reported through May 2015, but Petitioner did not report the higher income. Consequently, the overpayment continued during that time. (Id.)

The Petitioner finally reported her higher earnings, when she completed her six month report form and provided her paystubs in early June 2015. Petitioner timely completed her Six Month Report form, and via her paystubs, and accurately reported her income. As such, the change would not become effective until July 2015. See *CCM §2.1.5.1 Revised 12/10/2013*

So there is no overpayment for June 2015.

The Petitioner indicated that it is not fair to hold her to the reporting requirements, because her income fluctuated. However, Administrative Law Judges do not have equitable powers, meaning they cannot make decisions based upon what one party might think is fair. Rather, Administrative Law Judges are required to follow the law as it is written. Further, Petitioner knew by the time she received her last paycheck whether she was earning more than she reported and should have reported the income.

### **CONCLUSIONS OF LAW**

MECA did not correctly determine the Petitioner was overpaid \$1,668.44 in benefits for the period of September 7, 2014 to June 30, 2015.

Per *CCM §2.1.5.1 Revised 12/10/2013*, the overpayment period began the week of October 6, 2016 and ended May 31, 2015.

**THEREFORE, it is**

**ORDERED**

That MECA amended overpayment claim [REDACTED] to reflect an overpayment from October 6, 2014 through May 31, 2015. MECA shall take all administrative steps to complete this task within 10 days of this decision.

### **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 30th day of June, 2016

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\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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 30, 2016.

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