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[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

Case #: CCO - 173476

PRELIMINARY RECITALS

On April 6, 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 May 4, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$7,908.09 for the period of June 21, 2015 – September 30, 2015 for utilizing child care while not in an approved activity due to client error and an intentional program violation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 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:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner's household for purposes of child care assistance included the Petitioner and 5 children. Four of the Petitioner's children attended child care.
2. On February 16, 2015, the Petitioner contacted the agency about her child care benefits. She reported that employment at [REDACTED] ended on or about February 6, 2015 and employment at [REDACTED] started on February 9, 2015. The Petitioner's case was pended for employment verifications.
3. On March 6, 2015, the Petitioner submitted an offer letter from [REDACTED] verifying that she worked 40 hours/week at \$10/hour. Petitioner was authorized to receive child care benefits based on working 40 hours/week at [REDACTED] allowing 50 hours/week for the period of March 1, 2015 – June 6, 2015 for four children.
4. On June 17, 2015, the Petitioner's employment at [REDACTED] ended. The Petitioner did not report this change to the agency within 10 days.
5. On or about June 6, 2015, the Petitioner started employment at [REDACTED]. The Petitioner did not report this change to the agency within 10 days. On or about June 20, 2015, the Petitioner's employment with [REDACTED] ended. The Petitioner did not report this change to the agency.
6. On June 23, 2015, the agency issued a summary of Petitioner's case to the Petitioner and requested that the Petitioner contact the agency if any information was incorrect. The summary indicated Petitioner was working at [REDACTED] at \$10/hours, 40 hours/week.
7. On June 23, 2015, the agency issued a Notice of Eligibility Child Care informing the Petitioner that she was eligible for child care effective June 1, 2015 for four children. It informed her that she must get authorizations for care needed while she is in an approved activity. It also informed her of the requirement to report any changes in her situation that could change her eligibility within 10 days of the change. It further informed her that her eligibility was determined based on household income from her employment at [REDACTED] and PD's (adult member of the child care group) employment at [REDACTED].
8. On June 24, 2015, an agency worker noted in case comments that the earned income to determine Petitioner's eligibility was based on pay statements from [REDACTED] for February and March, 2015. The worker pended the Petitioner's case for updated employment verification. On June 25, 2015, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of employment and income. The due date for the information was July 6, 2015.
9. On June 29, 2015, the agency issued a notice to the Petitioner that child care authorizations were approved for four children for the period of June 7, 2015 – January 2, 2016 for 50 hours/week. The notice also informed the Petitioner of her responsibility to inform the agency of changes in work hours or changes in income. The notice informed her that she would be responsible for an overpayment for any failure to report a change which results in a child care overpayment to the provider or if she discontinues an approved activity but continues to take children to child care.
10. On July 17, 2015, the agency received verification that the Petitioner's employment at [REDACTED] ended on June 17, 2015. On July 17, 2015, the Petitioner reported to the agency that she obtained new employment at [REDACTED]. She was advised to submit employment verification.
11. On July 17, 2015, the agency obtained information that the Petitioner started employment with [REDACTED] on July 20, 2015, working 40 hours/week.

12. On July 20, 2015, the agency issued a Notice of Eligibility Child Care informing the Petitioner that she was eligible for child care benefits beginning August 1, 2015. It informed her that she must get authorizations for care needed while she is in an approved activity. It also informed her of the requirement to report any changes in her situation that could change her eligibility within 10 days of the change. It further informed her that her eligibility was determined based on household income of \$1,290/month from her employment at [REDACTED].
13. On August 3, 2015, the agency issued a notice that the Petitioner was authorized for child care benefits for four children at 45 hours/week for the period of July 19, 2015 – August 22, 2015. The notice also informed the Petitioner of her responsibility to inform the agency of changes in work hours or changes in income. The notice informed her that she would be responsible for an overpayment for any failure to report a change which results in a child care overpayment to the provider or if she discontinues an approved activity but continues to take children to child care.
14. On August 5, 2015, the Petitioner contacted the agency to report that she was staying at [REDACTED] and that her employment with [REDACTED] ended. She reported that she is participating in a “job ready” program at [REDACTED] prior to her W-2 starting on August 13, 2015. Petitioner never started W-2 activities.
15. On August 6, 2015, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of her living arrangement and verification that she is participating in an approved activity. The due date for the information was August 14, 2015.
16. On August 17, 2015, the agency issued a notice to the Petitioner that her child care authorizations would end on August 22, 2015.
17. On August 18, 2015, the Petitioner contacted the agency to request child care while she attends a class at [REDACTED]. Petitioner was not engaged in W-2 activities at the time. Petitioner was advised that she would need to provide verification of participation in an approved activity.
18. On August 31, 2015, the Petitioner contacted the agency to report she was starting a new job on September 1, 2015 at [REDACTED]. Petitioner requested child care. The case was pended for employment verification. Petitioner called the agency later to advise that her employer faxed an employment verification.
19. On September 2, 2015, the Petitioner’s employment at [REDACTED] ended. The Petitioner did not report this change to the agency within 10 days.
20. On September 4, 2015, the agency issued a Notice of Eligibility Child Care informing the Petitioner that she was eligible for child care benefits beginning September 1, 2015. It informed her that she must get authorizations for care needed while she is in an approved activity. It also informed her of the requirement to report any changes in her situation that could change her eligibility within 10 days of the change. It further informed her that her eligibility was determined based on household income of \$848/month from her employment at [REDACTED].
21. On September 8, 2015, the Petitioner contacted the agency to inquire about her child care benefits and complained about the long wait. On September 10, 2015, the Petitioner was authorized for child care benefits of 29 hours/week based on employment at [REDACTED] at 19 hours/week.
22. The agency issued child care benefits to the Petitioner’s providers for four children on a weekly basis for the period of June 7, 2015 – September 30, 2015 with the exception of the week of July 19, 2015 when no benefits were issued.
23. On April 1, 2016, the agency issued a child care overpayment notice and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$7,908.09 for the period of June 21, 2015 – September 30, 2015 due to

Petitioner utilizing child care while she was not in an approved activity. The agency determined that this was client error and an intentional program violation.

24. On April 6, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of Wis. Stat. § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code § DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code § DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

Wis. Stat. § 49.497(1).

Eligibility for child care benefits is dependent upon the parent(s) participating in “approved activities.” The Wisconsin Shares Child Care Manual states:

Every parent who is caring for a child in the Child Care Assistance Group must participate in an approved activity in order for the Assistance Group to be eligible for child care assistance.

Wisconsin Shares Child Care Manual (CCM), § 1.4.8.

Acceptable approved activities that qualify an individual for the Wisconsin Shares Child Care Subsidy Program include the following:

- Learnfare
- High School
- Employment
- Participation in a Tribal TANF Program
- Participation in W-2 Program
- FoodShare Employment and Training Program (FSET)
- Basic Education
- Technical College or Course of Study Leading to Employment
- Online Education

Id.

A Wisconsin Shares applicant must provide verification that he/she is participating in an approved activity. CCM, § 1.6.2.3. The primary responsibility for providing verification and resolving questionable information is on the applicant. CCM, § 1.6.1.

In addition to providing required verification, individuals receiving Wisconsin Shares Child Care Subsidy must report any changes in circumstances to the child care agency within 10 calendar days of the change if the changes may affect eligibility or the amount of child care needed. CCM, § 1.9.1. Specifically, participants are required to report the following changes by the 10th day after the change has occurred:

- A change of residence address.
- A change in mailing address.
- A change in the household composition (someone moves into or out of the home).
- A change in marital status.
- A change in employment.***
- A change in monthly income***, either because of a change in rate of pay or a change in the number of hours worked which increases monthly income by \$250.00 or decreases the monthly income by \$100.00 or any increase in income that raises the child care Assistance Group's monthly gross income above 200% of Federal Poverty Level (FPL).
- A change in child support and/or a change in family support that increases the aggregate amount of the support received for all household members to greater than \$1,250.00 per month.
- A change in work schedule.
- A change in school schedule.
- A change in the need for child care.***
- A change in child care providers.
- A change in an individual's approved activity status (starting or ending an activity).***
- A change in the shared placement schedule of a child.
- A change in the relationship with a child in the household (i.e. adoption, paternity establishment or legal parentage, foster care, subsidized guardianship, interim caretaker, or kinship care).

Id. (emphasis added).

In this case, the agency presented evidence that the Petitioner had numerous job changes during the period of June – September, 2015. As a result, she also had changes in her monthly income, her need for child care and her approved activity status. The agency presented evidence that the Petitioner did not report the changes in employment, income or approved activity status within 10 days as required. The agency presented evidence that the Petitioner continued to request child care benefits even though she was not in an approved activity when she requested the benefits. Specifically, the Petitioner was no longer employed when she requested benefits on or about June 24, 2015. The agency issued notices to the Petitioner that her eligibility was based on her employment at [REDACTED] and asked that any change in information be reported to the agency. The Petitioner did not inform the agency that she was no longer employed at [REDACTED] until July 17, 2015. Because of the Petitioner's failure to report this change, the agency continued to issue child care benefits to the provider.

Similarly, when the Petitioner's employment at [REDACTED] and at [REDACTED] ended after only working for those employers for one day, the Petitioner failed to notify the agency. Her eligibility and child care authorizations were based on her employment and on the work hours she reported. Because she did not report the end of her employment, the agency again continued to issue child care benefits to the provider. The notices issued to the Petitioner regarding her eligibility specifically informed her that she would be responsible for any overpayments to the provider that result from her failure to report changes in her circumstances that affect eligibility.

At the hearing, the Petitioner testified that when she was not employed, her children did not attend child care. The Petitioner also asserts that a program she participated in at [REDACTED] should have qualified as an approved activity. The agency disputes the Petitioner's assertion that her children did not attend child

care when the Petitioner was not employed and presented testimony from the Petitioner's provider that her children did attend child care during times that the Petitioner was not in an approved activity. Further, the agency never received verification from the Petitioner of participation in the program at [REDACTED] and asserts that without verification, it cannot determine whether this was an approved activity.

For purposes of determining whether there was an overpayment, the issue of whether the Petitioner's children actually attended child care during the overpayment period is not relevant. The facts demonstrate that the Petitioner failed to report changes in her employment status, need for child care and income to the agency within 10 days and, as a result, the agency continued to issue child care benefits to the providers when the Petitioner was not eligible for those benefits. The Petitioner did not provide verification that she was participating in other approved activities when she was not employed.

I have reviewed the agency's calculation of the overpayment. The agency seeks to recover child care benefits issued to the Petitioner's provider for payments issued when the Petitioner was not in an approved activity. Specifically, the agency does not seek to recover benefits for periods of time that the Petitioner's employers verified that she was employed. I do not find any error in the agency's calculation and the Petitioner presented no evidence to demonstrate any errors.

Based on the evidence presented, I conclude that the agency properly seeks to recover an overissuance of child care benefits in the amount of \$7,908.09 for the period of June 21, 2015 – September 30, 2015.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$7,908.09 for the period of June 21, 2015 – September 30, 2015.

THEREFORE, it is

ORDERED

That the Petitioner's appeal 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 28th day of July, 2016

\s _____
Debra Bursinger
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 28, 2016.

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