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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: CCO - 173916

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on April 26, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA regarding Child Care, a hearing was held on May 24, 2016, by telephone.

The issue for determination is whether Petitioner was overissued child care benefits.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

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

By: [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:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Her household size is 2.
2. The agency sent Petitioner a Child Care Overpayment Notification, dated March 18, 2016, that informed Petitioner that she had been overissued child care benefits in the total amount of

- \$2336.35. Claim # [REDACTED] The period of the overpayment is July 6, 2014 through October 31, 2014.
3. The child care benefit overissuance involved here is that household income was in excess of program limits.
  4. Petitioner had the following amount of gross income from wages in the following months in 2014: May - \$3834.08, July - \$2691.76, August - \$3089.61, September - \$2894.68 and October - \$4433.90. These amounts are taken from actual wages provided by employers. See Exhibit # B – 4 at page 4.
  5. The amount paid for child care by the Wisconsin Shares Child Care Program is not disputed.

### DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

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 the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code*. *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 or whose error caused the overpayment. *Wis. Admin. Code*, § DCF 101.23(1)(g). *Adm. Code*. Clearly, then, all overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual)*, §2.3.1.

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

There is an income test for child care eligibility, both at application and for ongoing eligibility. While initial eligibility requires income below 185% of the Federal Poverty level, to maintain eligibility income must stay below 200% of the Federal Poverty Level. *Wisconsin Shares Child Care Assistance Manual (Manual)*, §1.6.3; *Rev 12/10/13*. As Petitioner’s case was ongoing it is the 200% of the Federal Poverty Level (FPL) test that is to be applied. 200% of the FPL for a group of 2 during the period involved here was \$2622.00. *See Operations Memo 14-05, effective February 1, 2014*.

I also note that there are reporting requirements:

**1.15.1 Reporting Requirements**

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.

Reporting on ACCESS meets program requirements for reporting changes if timelines are met.

**1.15.2 Examples of Required Information to be Reported**

Examples of some of the information that parents are required to report include:

A change in the scheduled approved activity hours

A change in monthly income if it increases by at least \$250 or decreases \$100 or more or any increases that raise gross income above 200% of FPL.

...

*Manual, §§1.15.1 and 1.15.2; Rev 12/10/13*

I also note that the gross income limit is found on the Notice of Eligibility – Child Care, dated March 31, 2014. See Exhibit # B-5 at page 11. Without documentation that income was reported as required, I am concluding that Petitioner was overpaid child care as alleged.

**CONCLUSIONS OF LAW**

That the evidence demonstrates that Petitioner’s household income was in excess of 200% of the FPL as noted herein for the time period of July – October 2014, thus the agency correctly determined the overpayment.

**THEREFORE, it is ORDERED**

That this case 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 16th day of August, 2016

\s \_\_\_\_\_  
David D. Fleming  
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 August 16, 2016.

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