



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]

DECISION

CCO/140902

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 10, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee County Department of Human Services in regard to Child Care, a hearing was held on June 28, 2012, at Port Washington, Wisconsin.

The issue for determination is whether the agency properly seeks to collect an overissuance of child care benefits in the amount of \$3,991.49 for the period of May 3, 2010 – January 31, 2012 from the Petitioner.

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, Second Floor  
Madison, Wisconsin 53703 -2866

By: Destiny Cooper

Milwaukee County Department of Human Services  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.
2. Petitioner has been married to TS since approximately 2005. They have two children.

3. In 2009, upon release from federal prison, the Petitioner moved to his sister's house at 5132 N. 84<sup>th</sup> St., Milwaukee.
4. In June, 2010, TS moved to 5132 N. 84<sup>th</sup> St., Milwaukee with the two children.
5. The Petitioner and TS resided together at 5132 N. 84<sup>th</sup> St., Milwaukee from June, 2010 – January, 2012.
6. During the period of June, 2010 – January, 2012, TS received child care benefits for the two children. TS did not report to the agency that she was living with the Petitioner. Also, during that period, TS received W-2 benefits. TS did not participate in approved W-2 activities during the period of June, 2010 – January, 2012.
7. On April 23, 2012, the agency issued a Child Care Overpayment Notice to the Petitioner informing him that the agency had established an overpayment of \$3,991.49 for the period of May 3, 2010 – January 31, 2012.
8. On May 10, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### 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 Wisconsin Statutes §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by 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). All overpayments, regardless of whose error caused the overpayment, are to be recovered. Also see, Wisconsin Shares Child Care Assistance Manual, §2.3.1.

Generally speaking, to successfully establish an overpayment claim, the 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.

The Wisconsin Shares Child Care Assistance Manual § 2.1.6.2 specifies that “liability for a child care overpayment extends to *any parent*, non-marital co-parent or stepparent.” In addition, the manual notes that parents must be participating in an approved W-2 activity in order to receive child care assistance. Manual, §1.4.8. Also relevant is the requirement to report any changes in household composition and income that might affect benefits. Manual, §1.15.1.

In this case, the Petitioner does not dispute that he and TS lived together at 5132 N. 84<sup>th</sup> St., Milwaukee. The agency contends that they lived together for the period of May 3, 2010 – January 31, 2012. The agency presented little evidence to support the claim that the Petitioner and TS resided together and no evidence that the Petitioner and TS resided together in May, 2012. The Petitioner testified that TS moved to the home in June, 2010 and that he lived with her there until January, 2012. Therefore, based on the evidence, I conclude that the Petitioner and TS lived together at 5132 N. 84<sup>th</sup> St., Milwaukee from June, 2010 – January 31, 2012.

The agency seeks to recover \$3,991.49 from the Petitioner for the period of May 3, 2010 – January 31, 2010 based on TS’s failure to report the change in household composition and income as well as her failure to participate in required W-2 activities. The agency did present evidence of TS’ non-participation in W-2 activities. The agency also presented case comments as evidence that TS did not report that she lived with the Petitioner. The case comments indicate that TS admitted she did not report that she was living with the Petitioner. As noted earlier, though the agency’s evidence was weak to show that the Petitioner and TS lived together from May, 2010 – January, 2012, the Petitioner conceded that they did live together from June, 2010 – January, 2012. Therefore, the agency is entitled to recover any child care benefits issued for the children from June, 2010 – January, 2012.

To support its overpayment claims, the agency presented the Overpayment Worksheets showing the amount of the overpayment it calculated. It also presented child care benefit issuance histories for the Petitioner’s children for the periods of May 1, 2010 – October 1, 2010, May 1, 2011 – October 1, 2011 and October 2, 2011 – January 31, 2012. It did not present any issuance history for the period of October 2, 2010 – April 31, 2011. Without an issuance history to support the agency’s claim that there was an overissuance of benefits, I cannot determine if the agency properly seeks to recover an overpayment for that period. The overpayment worksheet includes a claim of \$588 for the period of October 2, 2010 – April 31, 2011. The agency has not met its burden to establish this part of its claim. The agency did establish an overpayment of

The Petitioner credibly testified that he was not aware that TS was receiving W-2 and child care benefits. He stated he was aware that she received Unemployment Compensation. He further testified that he has been working steadily since December, 2010.

Though the Petitioner may not have been aware that TS received child care benefits for their children and W-2 benefits, the law is clear that any parent is liable for any overissuance of child care benefits. Therefore, as a parent of the two children, the Petitioner is liable for the overpayment that the agency proved in the amount of \$3,403.49 for the period of June, 2010 – October 1, 2010, May 1, 2011 – October 1, 2011 and October 2, 2011 – January 31, 2012.

### **CONCLUSIONS OF LAW**

1. The agency has established an overissuance of child care benefits for which the Petitioner is liable in the amount of \$3,403.49 for the periods of June, 2010 – October 1, 2010, May 1, 2011 – October 1, 2011 and October 2, 2011 – January 31, 2012.
2. The agency has not established an overissuance of child care benefits to the Petitioner for the period of October 2, 2010 – April 31, 2011.

**THEREFORE, it is**

**ORDERED**

This matter is remanded to the agency to cease collection of any overissuance of child care benefits to the Petitioner for the period of October 2, 2010 – April 31, 2011. The agency shall rescind that portion of the overpayment action. This action shall be taken within 10 days of the date of this decision.

With regard to the overissuance of child care benefits for the periods of June, 2010 – October 1, 2010, May 1, 2011 – October 1, 2011 and October 2, 2011 – January 31, 2012, the petition is hereby dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Second Floor, Madison, Wisconsin 53703-2866. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 14th day of September, 2012

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Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals

c: Milwaukee County Department of Human Services - email  
Department of Children and Families - email



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 14, 2012.

Milwaukee County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud