



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

CCO/141274

PRELIMINARY RECITALS

Pursuant to a petition filed May 29, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on June 27, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the evidence is sufficient to demonstrate that Petitioner was overissued child care benefits and, if so, whether the amount of the alleged overpayment has been demonstrated to be accurate.

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: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. The agency sent Petitioner a notice dated May 17, 2012 that informed Petitioner that she had been overissued child care benefits in the amount of \$1151.50 for the time period of January 15, 2012 through April 30, 2012.
3. Petitioner was attending class at her local technical college for the 2011 - 12 term. It was an approved activity. Petitioner was working full-time during the fall semester of 2011 and was eligible for payment for child care by the Wisconsin Shares Child Care Program.
4. Petitioner worked only four weeks during the spring semester of 2012, did not report that to the agency until April 17, 2012 and did use child care services that were paid for by the Shares Program during that semester.
5. Petitioner did receive paychecks dated January 13, 2012, January 27, 2012 and March 9, 2012. The first two were in the amount of \$131.60 and the last was \$263.20 as that March 9, 2012 paycheck covered a two-week period.
6. 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*, §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.

All parents must be participating in an approved activity in order to receive child care assistance. *Wisconsin Shares Child Care Assistance Manual*, §1.4.8. Attendance at a technical college can be an approved activity:

1.5.7 Technical College or Course of Study Producing Employment

Participate in a course of study at a technical college or participate in a course of study that would produce an employment skill as determined by the department if the county Human Services or other agency or its subcontracted eligibility determination agency determines that the course or courses would facilitate the individual to maintain employment.

- A school and work schedule is required for all participants.
- The applicant/child care authorizing agency must determine that the education will provide an employment skill that facilitates the employed individual's efforts to maintain their current position or enhance employment in the same or another profession.
- The determination shall be entered by the agency into CARES case comments.
- Apprenticeships are an allowable approved activity for Wisconsin Shares child care assistance. The apprenticeship may be paid or unpaid. Apprenticeships are exempt from the five hour per week work requirement.
- Except for persons in apprenticeships, the individual is employed at least five (5) hours per week or 20 hours per month at the time the authorization for school begins and continues to be employed at least five (5) hours per week or 20 hours per month throughout the semester. A child care administrative agency may have a policy that exceeds 20 hours per month if the policy is in writing is applied to all parents and is made available to the parent.
- The employment meets the Wisconsin Shares child care assistance definitions of unsubsidized employment, or
- The employment is a work study position, or
- The employment is directly related to the individual's school and their participation in the employment while in school produces a measurable cash value such as: fellowships, working for room and board as a Resident Assistant in a dormitory or private apartment, teaching assistant positions for tuition credits, or any other education-related employment that has a measurable cash value equivalent to five (5) hours per week at the state
- Unsubsidized employment that is on an "on-call" basis or registration with a temporary employment agency is not qualified as employment for approval of Technical College or Course of Study Producing Employment as an approved activity. The individual must actually work the minimum hours on a weekly or monthly basis.
- Wisconsin Shares child care assistance for participating in education under this section is limited to no more than 24 months per lifetime of the parent. The 24 months need not be consecutive.
- The 24 months shall be recorded in the CSAW system by the agency or child care authorizing agency.
- The 24 month rule does not apply to individuals in a subsidized employment position in W-2 or in a Tribal TANF employment position.
- Wisconsin Shares child care assistance is not available for study time.
- Wisconsin Shares child care assistance is not available for online courses that are self-paced and do not require specific log on times for class sessions.

Wisconsin Shares Child Care Assistance Manual, §1.5.7.

Here it is apparent that Petitioner was not working five hours per week on a steady basis during the spring semester of 2012. Thus she was not eligible for child care benefits during the weeks that she was not working the required five hours. It is apparent, however, that there were four weeks when she worked at least 5 hours based upon the earnings. The overpayment worksheets are not, however, in the hearing record thus I cannot be sure that the amount of the overpayment is correct. In other words, the four weeks in which Petitioner was working more than five hours should not be included as part of the overpayment and there is no way, without the worksheets, for the undersigned to be sure of that.

CONCLUSIONS OF LAW

That the evidence is sufficient to demonstrate that Petitioner was overpaid child care benefits in the amount of \$1151.50 for the period from for the time period of January 12, 2012 through April 30, 2012 but is not sufficient to demonstrate the amount alleged is correct.

THEREFORE, it is

ORDERED

This matter is sent back to the agency with instructions to take the steps necessary to assure that this overpayment does not include an overpayment amount for any of the weeks during the time period involved here during which Petitioner worked the required 5 hour minimum. If the agency has included an overpayment for those weeks it must remove those overpayments and adjust this claim accordingly. It must do this within 10 days of the date of this and notify the Division of Hearings and Appeals and Petitioner of the results of the review.

In all other respects, this appeal is 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 20th day of September, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Kenosha County Human Service Department - 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 20, 2012.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud